

Remedy 1 – Introduction of a new standard condition to electricity generators', suppliers', interconnectors', transmission, and distribution licences to require that variable transmission losses are priced on the basis of location in order to achieve technical efficiency

(a) What would be an appropriate method for ensuring that variable transmission losses are priced on the basis of location?

(b) How should the variable transmission losses be allocated between generators and suppliers?

(i) Is the 45-55 split appropriate or could efficiency be improved further by changing this allocation?

(c) What will be the distributional impacts of this remedy? Should the CMA take these into account in coming to a view on the proportionality of this remedy?

(d) Should the CMA implement this remedy directly, ie via an order, or should it make a recommendation to Ofgem to initiate a BSC modification instead? Are there any particular aspects of Ofgem's objectives and duties to which the CMA should have regard if implementing this remedy by a licence change?

We recognise the CMA's arguments for the introduction of locational transmission losses which cover familiar ground; this has been a disputed area of industry governance for years.

Transmission losses account for around 1.7% of total power flowing across the transmission network.¹ These losses have financial consequences for consumers because of their impact on the amount of generation that needs to be built and, for those technologies with input fuel costs, on their operating costs. Those costs ultimately flow through to consumers. Losses also impact on carbon emissions as they affect the pattern, type and level of generation needed to meet demand. Losses cannot be reduced to zero, but there are strong public policy arguments for seeking to reduce them from their current levels, where it is cost-effective to do so.

The current approach of recovering losses on a uniform basis results in cross-subsidies between different groups of generators and consumers. The interests of consumers and generators tend to be inverted in each region. In simple terms, northern consumers and southern generators are likely to lose out under the current uniform pricing approach, while southern consumers and northern generators are likely to benefit from it, when compared to locational charging. In theory, the GB electricity system would be more cost efficient if locational signals were introduced - you note a possible benefit of £160m to £275m over ten years. Provided competitive pressure exists elsewhere in the supply chain - and it is not entirely clear that it does from your retail findings - these savings could be passed on to consumers.

¹ National Grid 2014, Transmission Losses Report: Reporting Period 1 April 2013 to 31 March 2014.

We are somewhat sceptical that the introduction of locational transmission loss charging would be a big enough factor to move the location of demand. You note that the current arrangements could result in 'inefficiency in the location of demand, particularly high-consumption industrial demand.' This appears somewhat unrealistic to us, as transmission losses account for only a tiny fraction of the end consumer bill, while climatic conditions - how cold it is - can more substantively affect energy costs. A household or business relocating from Lands End to John O'Groats might see the transmission losses applied to each unit of energy they use become more favourable under a system of locational losses, but it is likely that they would need to use far more energy to achieve the same level of heat. Other externalities such as family links, the availability and cost of labour, land and transport links etc are also likely to dwarf the effect of transmission losses in household and business siting decisions.

Notwithstanding this, we do see a potential consumer benefit resulting from the within GB redistribution of costs that would result from locational transmission losses. You note that past modelling suggests that these reforms 'would result in a transfer of just under £40 million a year from consumers in the South of England to those in Scotland and the North of England.' While fuel poverty is at unacceptable levels throughout Great Britain, levels in both Scotland and the North of England are worse than the average. So insofar as these reforms would provide limited amelioration of energy costs in these areas it should have a beneficial effect on fuel poverty. It should be noted that this is a crude pattern rather than an infallible rule and there are exceptions to it - for example, some of the worst fuel poverty figures in England are in Devon and Cornwall.² Plus, taken in the round, if total GB costs decrease as your modelling suggests, then on average consumers should be better off. Though we do not think the effect on household 'winners' or 'losers' will be profound (given the magnitude of transmission losses in final bills is very small), we would suggest that a more detailed impact assessment of its distributional effects should be developed in the event that these proposals are taken forward.

Locational signals may more plausibly influence the location of new generation, and which existing generation is dispatched. Generators in the south of England would see costs reduce while those in the north of England and Scotland would see them increase. The Scottish Government has been highly critical of other locational transmission charges such as Transmission Network Use of System ('TNUoS') charging, because of its potentially adverse impact on the attractiveness of Scotland as a generation location. While you are not bound by the opinion of either UK or Scottish Government on this matter, we would encourage you to engage with both before progressing any proposals in order to ensure that the potential distributional impacts on both generation and demand are fully understood, given that this friction exists.

There have been at least four previous attempts to introduce locational transmission losses. Two of these resulted in reforms being overturned as a result of judicial review (P82 in 2003, and P203 in 2008), the other two saw Ofgem (or its predecessor Offer) effectively walk away from proposals that it seemed to support due to external events either taking priority or

² See the Centre for Sustainable Energy's Fuel Poverty Mapping project. <http://tinyurl.com/pbayxf3>

appearing to make reforms inappropriate at that time³ (and which included another, abandoned, judicial review). The first initiative to introduce locational transmission losses dates back to 1994 and 21 years on the matter is still unresolved. Given the three previous judicial reviews, we think it is reasonably likely that if the CMA makes a decision to implement locational losses that it may be subject to legal challenge. We would be worried if this could cause the remainder of the package of remedies to be delayed, and would welcome any assurance you can give that the implementation timetable for the wider package of remedies could not be derailed by any challenge to this aspect of it.

³ The introduction of locational transmission losses was agreed under the old electricity Pool arrangements but was subject to judicial review at the time that the Pool was replaced by NETA in 1998. NETA did not include locational losses and the judicial review was shelved. In 2011, Ofgem decided not to progress P229 for multiple reasons, one of which appeared to be that locational pricing might be required at European level by 2015.

Remedy 2a – DECC to undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism

We welcome the CMA's provisional finding that problems with the Contract for Difference ('CfD') allocation process can lead to adverse effects. We share the Authority's concern that contracts allocated through non-competitive processes are likely to offer poor value for money. The National Audit Office ('NAO') and the parliamentary Public Accounts Committee ('PAC') have expressed similar concerns on the Final Investment Decision Enabling for Renewables ('FIDER') scheme.⁴

It is imperative for consumer well-being that DECC foster competition between low carbon technologies and that it concentrates its efforts on bringing forward the most cost-effective projects. There is only finite funding available through the Levy Control Framework ('LCF') and the latest analysis from the Office of Budget Responsibility suggests that it has already been exhausted in the period to 2020/21.⁵ This has resulted in the government seeking cuts to the support available to the most cost-effective technologies such as onshore wind and solar. Given the budgetary constraints, and the need to ensure value for money when investment is being paid for through levies on an essential service, we think it is unacceptable that lower cost projects in renewable technologies that are subject to genuine competition find themselves frozen out as a result of determination to bring forward very expensive bespoke projects.

(a) Would the remedy ensure that CfDs that are allocated outside the auction mechanism are awarded only when the benefits of doing so outweigh the costs?

The proposal for full impact assessments of non-competitive CfDs is appealing, and would be an improvement on the status quo. However, there is reason to doubt its impact would be as great as the CMA suggests in describing this potential remedy.

It could certainly improve transparency over policy trade-offs and the valuation of the external (non-energy) benefits of projects. Many of these externalities are difficult to quantify, and so may be hard to accurately capture in the course of a cost-benefit analysis. For example, much has been made of the possibility of using proposed tidal lagoons for non-energy purposes eg as leisure facilities - can this value be captured in an impact assessment, and, if it does have value, should it be paid for through levies on energy bills? An impact assessment process would be valuable in flushing out these hidden assumptions and reasonings.

A further advantage of a published impact assessment is that it should reduce the tendency of DECC to hide behind commercial confidentiality and avoid explaining the full terms it has agreed. Too few of the basic terms of the most prominent bilaterally negotiated CfD, for the

⁴ 'Early contracts for renewable electricity,' NAO, 27 June 2014. <http://tinyurl.com/lx6wey8> & 'Early contracts for renewable electricity,' PAC, 3 October 2014. <http://tinyurl.com/m6e7d7l>

⁵ The LCF was intended to be capped at £7.6bn (in 2011/12 prices) in 2020/21. The OBR currently forecasts a spend of £9.1bn (in 2011/12 prices). 'Written Ministerial Statement to the Lords,' Lord Bourne, 22 July 2015. <http://tinyurl.com/q2jkqnd>

Hinkley Point C nuclear power station, have been published to allow external stakeholders to assess its total costs. For example, neither the longstop date, which provides a safeguard to cancel the CfD if construction overruns, nor the parameters of a gain-share mechanism that would share benefits with consumers if it comes in under budget, have been published. This is the case even after a European Commission investigation which forced some new information into the public domain. The European Commission's statements suggest that it was able to extract more value for UK consumers than DECC was, by setting tougher commercial terms as a precondition for allowing the deal. These resulted in a firm saving to taxpayers of at least £1bn from altering the terms of the State guarantee, and a less certain saving to bill-payers that could run into £bns from altering the terms of a gain-sharing mechanism.⁶

These savings demonstrate the value that can be delivered to consumers and citizens where the terms of a deal are subject to third party scrutiny. They also illustrate how difficult it is to have confidence in DECC's processes for bilaterally negotiating behind closed doors. Only with full disclosure of all the terms and conditions, before the contract is concluded, can the consumer have any confidence that what they are being asked to support is reasonable and affordable. As well as ensuring full impact assessments are carried out in future, the CMA should also demand full publication of terms in existing contracts that affect consumers' liabilities.

However, even if DECC's reasoning is made more overt, it may not 'ensure that CfDs...are only allocated when the benefits of doing so outweigh the costs.' This is because that presupposes that policymakers will act in line with the conclusions of their own impact assessments, and they sometimes may not.⁷ Impact assessments are not binding on ministers and may be overruled or simply ignored. Because of this, while impact assessments discourage poor decisions they do not preclude them. Ultimately, DECC officials and ministers have to be more attentive to the costs of policy than they have been previously.

(b) How much discretion should DECC retain in terms of the weight it places on each factor that it takes into account in coming to a decision on which projects to award CfDs outside the CfD auction mechanism? Should DECC be required to consult on and determine these factors and their relative importance in advance to enhance transparency? Should the weighting of each factor be constant across projects?

We share the CMA's observation that it is unclear what criteria the government uses to determine whether to invest in a project, or even whether there are any pre-determined criteria. It is also unclear whether the same criteria are applied from one negotiation to the next. This creates an arbitrary system where developers and consumers alike are unsure what grounds decisions will be based on. Because negotiations take place in secret, it is

⁶ 'State aid: Commission concludes modified UK measures for Hinkley Point nuclear power plant are compatible with EU rules,' European Commission, 8 October 2014. <http://tinyurl.com/oxbwfvq>

⁷ For example, the impact assessment for the UK renewable energy strategy found that the proposed programme had a net present value of minus £66bn to the public, even after including carbon savings. Despite this, it went ahead. 'Impact of renewable energy strategy,' DECC, 13 July 2009. <http://tinyurl.com/plq2rm6>

also impossible for third parties to challenge any arguments made by developers that are not already in the public domain.

Consistency in criteria applied would be highly desirable. This could provide reassurance to both developers and consumers that they understand the rules of the game. It could also reduce legal risk, in the form of judicial review and possible State Aid challenge, by allowing DECC to demonstrate that it has followed an objective process in decision-making.

Energy policy is normally categorised as a trilemma: affordability; decarbonising; and ensuring secure supplies. We would therefore expect the criteria to be related back to these three aims. We recognise that other factors external to the trilemma, such as regional aid, or job creation, may also feature in government thinking. Delivering these externalities will often be legitimate aims of government, but where they exist we would like to see DECC forced to articulate why they should be paid for through energy bills rather than through more conventional tax and spend measures.

While modelling the dynamic effects of making one technology choice on the prospects for other technologies is intrinsically difficult, we would like to see it included within the selection criteria. This is because bilaterally negotiated projects may block other technologies, including much more immediately cost-effective ones, from receiving funding. This risk is already materialising: the NAO's June 2014 report highlighted that 58% of the available funding for CfDs for the period to 2020 had been exhausted by FIDER projects and we have recently seen the cancellation of the CfD allocation auction expected in October 2015 because there is no funding available for it. In effect, a bilaterally negotiated project must show some additionality over the consumer benefits that could be delivered by a competitively allocated project if it is to go ahead - and the selection criteria should provide a means to explore whether this additionality exists. Where a more costly option is chosen, consumers are being asked to defer carbon abatement to a later period. The criteria should also provide a means to demonstrate how the emissions savings that are being deferred will be made up later.

In any event, to ensure the most cost-effective use of the limited resources available to address climate change, three hurdles should be cleared in any bilateral negotiation:

- a. That the technology in question has scope for significant long-term global climate change mitigation (a 'wider application' test);
- b. That the specific investments can make a material difference to global-long term reductions in cost of the technology (a 'learning from doing' test); and
- c. That a. and b. can be achieved without undermining the prospects of other technologies that could deliver the same or greater emissions savings for a lower cost (a 'do no harm to cheaper alternatives' test).

(c) In which, exceptional circumstances should DECC be able to allocate CfDs outside the auction process? For example, for reasons of industrial policy, where there are wider market failures, or where there may be insufficient competitors to hold an auction?

There may be some circumstances where bilateral negotiation is unavoidable. However, the government should try to minimise the occasions in which bilateral negotiating procedures are used. Government will always be at a disadvantage in such negotiations because of informational asymmetries between its staff and those of a project developer. Worse still, government may be unwilling to walk away from negotiations once they are underway, further weakening its bargaining power (this was widely perceived to be the case during the Hinkley C negotiations). If the threat of walking away is not both genuine, and perceived to be genuine, the chances of achieving value for money are reduced. Competition is vital to ensure that consumers' money is spent in the most efficient manner, so that we get the greatest amount of carbon reduction for the money spent.

We acknowledge that government may have other policy objectives that could be achieved alongside emissions reduction or security of supply when considering energy infrastructure investments. The CMA notes the possibility that industrial policy may be a reason to offer CfDs outside competitive processes. It is entirely legitimate for a government to wish to stimulate jobs, or regional development, as a byproduct of energy policy. However, we think that the appropriate way to pay for externalities (that are not covered within the energy trilemma) is through the tax system, rather than using regressive levies on consumer bills to make up the difference. Therefore, we do not agree that industrial policy concerns justify non-competitive (and by implication, costlier) contract allocation. Rather, if government is determined that a project should go ahead because of such externalities, it should supplement competitive payments for energy supplied with grants or tax breaks from the Treasury for other industrial policy goals.

Remedy 2b – DECC to undertake and consult on a clear and thorough assessment before allocating technologies between pots and the CfD budget to the different pots

We share the CMA's impression that the CfD budget has been allocated in an arbitrary manner that fails to deliver best value to bill-payers. There appears to be a reasonable basis for which technologies are currently allocated into the more established and less established pots, but we agree that it would be beneficial to have a regular and clear review, particularly to discover whether technologies currently seen as immature have developed sufficiently that they should be exposed to competition with already-mature alternatives. It is also not clear whether the division of budget between the two pots has any logical basis.

Recent and ongoing policy developments from DECC may frustrate the ability to use the allocation mechanism to deliver value for money. In the first competitive allocation round in October 2014, 82% of the contracted capacity was won by onshore wind.⁸ Since then, government has both signalled an intention to refuse further subsidy for new onshore wind and cancelled the subsequent allocation round that had been scheduled for October 2015. If/when the next allocation round for Pot 1 technologies takes place, the absence of onshore wind could affect the liquidity of the auction and may inflate the prices that can be achieved for consumers. The budget itself is also subject to considerable scrutiny, with the OBR suggesting that the LCF is overspent out to 2020/21. If this proves to be correct, government will necessarily have to reconsider its options for funding low carbon energy infrastructure, presumably either by increasing the budget and increasing consumer bills, or by further scaling back the expected deployment over the remainder of the parliament.

The allocation of funding between the more established and less established technologies pot has been heavily skewed towards the latter. In the first allocation round, of the £315m in 2020/21 liabilities estimated as resulting from the contracts, £259m - 82% - related to the less established pot.⁹ In your provisional findings, you suggest that you have not received an explanation from DECC on how it determined the allocation of funding between the two pots beyond that it would result in a roughly equal volume of capacity being procured from each.¹⁰ Given that the cost of capacity, and decarbonisation, is much lower from the more established pot the logic in this appears questionable.

The LCF may always struggle to cope with the challenges of managing CfD costs, because it is a (relatively¹¹) fixed envelope while CfD costs could vary considerably with wholesale prices. There are also a range of uncertainties around other policy instruments covered by the LCF, such as load factors and take-up rates of demand-led support mechanisms like the Renewables Obligation and feed-in tariffs exceeding expectations, that may constrain its ability to fully manage costs. But it is preferable that an imperfect cost control mechanism

⁸ 'CfD auction allocation round one,' DECC, October 2014. <http://tinyurl.com/oayvts6>

⁹ <http://tinyurl.com/pulon33>

¹⁰ Paragraph 5.229, 5.230.

¹¹ The agreement between DECC and Treasury introducing the LCF does allow for 20% headroom (overspend) on the LCF before action must be taken to bring it back within budget. Unfortunately the OBR figures suggest this headroom is already exhausted.

exists than that no cost control mechanism exists. It should also, in theory, have a political economy function, namely to encourage DECC to spend consumers' money responsibly.

Before the election, the Conservative party committed itself to taking up the recommendations of the CMA. We would like you to set out a robust framework for allocating budget and technologies between the more and less established pots that can drive more cost effective decarbonisation in future rounds, and that can be used to hold current and future governments accountable for their spending decisions.

(a) Would the remedy ensure that future decisions by DECC on the allocation of technologies and the CfD budget to the different pots are taken in a robust and transparent manner?

(b) Is the remedy likely to result in a positive change in how DECC makes decisions regarding the allocation of the CfD budget to the different pots?

By requiring DECC to explain the reasoning underpinning its decisions relating to CfD budget pots, the proposed remedy could be helpful in holding government to account.

(c) How regularly should DECC review the allocation of technologies between pots? What information should DECC publish when deciding to amend the allocation of technologies between pots? Should it also on a regular basis consult and/or publish reasons for not amending the allocation of technologies between pots?

The stated purpose of the 'less established' pot is to develop immature technologies so that they become cheaper and can contribute to long-term cost-effective emissions reduction efforts. Yet the government has not set out how it intends to assess the development of technologies. It is neither clear when technologies have reached the point that they should be considered mature, and exposed to greater competition, nor when (or indeed whether) a point is reached where development is found to have been less than hoped for, and that technology becomes ineligible for further funds. Formalising this decision-making process would be an important step in improving the value for money delivered by the contract for difference budget, and in ensuring the UK maximises its resources in tackling climate change. The obvious timetable for such analysis would be to match it to the CfD auction schedule, such that any decisions about technologies moving (or not) between pots are taken in advance of commencing a new auction round (i.e. summer in each calendar year, based on the schedules for the first two auction rounds).

(d) Should DECC be limited in the maximum proportion of the CfD budget that it can allocate to each of the different pots?

We accept that there is value in supporting the development of immature technologies, providing it is consistent with the principles mentioned in the response to Remedy 2a. However, it does not follow that this requires such a large sum to be spent on those less mature technologies. In the first allocation round ~80% of the budget was reserved for 'immature' Pot 2 technologies. We would prefer to see a reversal of this ratio, with the majority of funding made available to the most cost-effective bidders in open competition.

The current division of budget, which puts the majority of the available funding towards less mature Pot 2 technologies means that consumers money is being used to buy less decarbonisation than would be the case if it were allocated to cheaper technologies. Recent analysis by consultants Baringa Partners found that in a hypothetical re-run of the first CfD auction in 2014/15, 72% more capacity and a 1.2TWh/year increase in low carbon electricity generated could have been bought had distinctions between pots been eliminated.¹² Recent Policy Exchange analysis found that just 1% of the levy control framework budget has been allocated on a purely competitive basis.¹³

¹² 'Changes to renewable energy support could save £600 million a year and still deliver 2020 renewable energy target,' Green Hedge Renewables, 2 June 2015. <http://tinyurl.com/qjkm4kf>

¹³ Page 45, 'The customer is always right,' Policy Exchange, July 2015. <http://tinyurl.com/ovyo7km>

Remedy 3 – Remove from domestic retail energy suppliers’ licences the ‘simpler choices’ component of the RMR rules

Energy is and will remain a homogenous product.

The CMA states that the RMR rules have not been in place long enough to be able to assess their full impact on consumer engagement and competition¹⁴. Does the CMA have a view how long improvements in consumer engagement and competition should take in a market that has experienced sustained low levels of engagement?

We do not believe the current rules have been a significant barrier to entry given how many new suppliers have entered or will shortly enter the market post RMR reforms.

Table 1: New entry since the first phase of the Retail Market Reforms in August 2013		
Supplier name	Full market entry	Business model
Better Energy	Spring 2014	gas only, Direct Debit focus
Bristol Energy	late 2015	dual fuel, all payment methods
Daligas	Autumn 2013	gas only, Direct Debit prices
E Gas and Electric	Summer 2014	PPM specialist
Extra Energy	Spring 2014	dual fuel, Direct Debit focus
Future Energy	2015 tbc	dual fuel
GB Energy	Spring 2015	dual fuel, Direct Debit prices
GnErgy	Summer 2014	dual fuel, Direct Debit and QCC prices
Go Effortless Energy	Winter 2015	dual fuel, Direct Debit prices
Robin Hood Energy	Summer 2015	dual fuel, all payment methods
Tempus Energy	2015	electricity only, smart tariffs
Zog Energy	Summer 2014	gas only, Direct Debit prices

We could only support Remedy 3 if it was accompanied by effective principles-based regulation that would act as a constraint on suppliers’ ability to return to the days of widespread tariff proliferation and complex and confusing tariff and discount structures. The RMR reforms were introduced for a reason.

¹⁴ Paragraph 141 in the Provisional Findings Report.

Our own research and analysis from 2010-11 showed that there was significant consumer confusion about why suppliers' tariff offerings were so complex.¹⁵ One key problem we identified pre tariff cap was that 'the results page on a switching site often consists of a long list of tariffs offered by the same supplier with the prices varying by a few pounds or the associated affinity deal.'¹⁶ We would not want to see a return to that period, as consumers found this confusing and it was easier for people to be misled.

As we stated in 2010:

'The product is, for the most part, standardised. The quality or reliability of the actual product does not change depending on the supplier or the tariff. Unsurprisingly, this leaves consumers baffled as to why such a standardised product is sold in hundreds of different variations.'

*Despite the increasing similarities in the sales and marketing of energy supply tariffs to other consumer products and services, energy remains a very different product in the eyes of consumers. It is an essential for life service. All households require energy to heat their houses and cook their food; it is not a discretionary spend. Energy falls into the same essential category as water, where consumers are also facing increasing bills but do not face the choice of having to navigate between hundreds of different offerings from a water supplier, each offering a slightly different price and the associated small print. When a household chooses the wrong energy tariff it can result in substantially increased annual bills.'*¹⁷

Consumer research conducted by Ofgem during the RMR process demonstrated that the low engagement levels were, in part, linked to consumers' lack of understanding of how to make appropriate switching decisions.

We would not support the removal of the principles that require suppliers to advertise their white label products to existing customers on their bills. We believe these are important protections which prevent suppliers from segmenting their customers to the detriment of their more sticky customers. It also means a supplier could effectively 'hide' a substantially cheaper white label acquisition deal from its customer base.

Nor would we want to see the return to the previous lack of restrictions on discounts and incentives offered by suppliers or cashback companies. Whilst discounts and incentives have a significant role in encouraging engagement, pre-RMR they were often used to steer consumers towards poorer value tariffs. Many consumers focussed on the short term discount over the higher overall price to be paid.

¹⁵ 'Request for investigation into energy tariffs,' Consumer Focus, 2 December 2010. <http://tinyurl.com/5rc2svy> & 'Update on our December 2010 open letter on energy tariffs,' Consumer Focus, 21 November 2011. <http://tinyurl.com/qz369q9>

¹⁶ See page 16 in 'Update on our December 2010 open letter on energy tariffs.' Ibid.

¹⁷ Page 2. Ibid.

Ofgem's reasoning for restricting how discounts could be used was that *'behavioural economics suggests that consumers make inconsistent decisions depending on when monetary rewards are received which has led us to limit the type of discounts allowed.'*¹⁸

Has the CMA received new evidence that suggests that pre-RMR discount structures did not lead to poor decision making by consumers?

Consumers reaching the end of a fixed term tariff must not be rolled onto poor value tariffs that they are unable to switch away from without penalty.

(a) Would this remedy be effective in increasing competition between domestic retail energy suppliers and/or between PCWs? What additional tariffs would energy suppliers be likely to offer that they currently do not due to the RMR restrictions?

Was the CMA able to obtain evidence that there was more fierce price competition between PCWs, in terms of commission rates, prior to the introduction of the RMR reforms and that this competition delivered good consumer outcomes? This is not clear from the documents published.

We note that the large suppliers 'made specific comments in relation to the impact of the removal of specific tariffs on their ability to compete for low consumption and vulnerable customers.'¹⁹ Did these suppliers provide any evidence that demonstrated they were actively competing to acquire additional low consumption and/or vulnerable consumers or were these particular customers simply the unwitting beneficiaries of a historical product policy targeted at other groups of consumers?

Although we had identified pre and post implementation that there was a clear issue with the shift away from two tier tariffs for low gas users, we believe this problem could have been resolved if suppliers had a) appropriately tailored their communications and/or acted more flexibly when they implemented the RMR reforms and b) had Ofgem issued guidance at an earlier stage.

British Gas has since received a derogation which allows it to offer a fairer price to its low gas users. This was following pressure from their customers, Consumer Futures / Citizens Advice Service and MPs. Given that several other suppliers have told the CMA that they feel the tariff rules have hampered their ability to offer tariffs suitable for the needs of their low income, vulnerable consumers, we do not understand why they haven't yet applied for similar derogation.

Regarding the introduction of new smart tariffs, it has always been our assumption that the four tariff rules were a temporary measure and would be removed once there were substantial volumes of smart meters in situ. It should also be noted that the limit to four tariffs is 'per meter type or meter mode'. Since smart meters can be switched freely between the five designated modes - single rate, two rate, three rate, dynamic teleswitching and other

¹⁸ Paragraph 2.64 in 'The Retail Market Review - implementation of simpler tariff choices and clearer information,' Ofgem, 27 August 2013. <http://tinyurl.com/npls2mb>

¹⁹ Appendix 8.2 to the Provisional Findings Report.

time-of-use - the cap on tariff numbers with a smart meter is effectively 20. This has not always been well understood by stakeholders.

(b) Removing the four-tariff rule is likely to increase the range of tariffs on offer and result in different tariffs being offered on different PCWs. Are there, therefore, any remedies that the CMA should consider alongside this remedy, to encourage domestic customers to use more than one PCW in order to facilitate effective competition between PCWs and domestic energy suppliers?

See our response to Remedy 6.

We do not agree that a situation where individual PCWs are able to offer exclusive deals will necessarily lead to good consumer outcomes. There is already the facility for PCWs to run collective switching schemes where exclusive tariffs can be negotiated.

Furthermore, we do not think a new consumer engagement message encouraging consumers to carry out price comparisons on multiple PCWs is either practical or likely to be effective in raising engagement levels in a market that already suffers from weak customer response. There is a significant risk that introducing more complicated consumer education messaging could further reduce engagement levels as consumers, including low income and sticky consumers in particular, decide it is too much hassle to bother shopping around. We believe this is a particular risk for low income households, which the CMA's recent paper has identified are less likely to take risks and have lower consumer literacy.²⁰

We believe Ofgem's decision to amend the Confidence Code to require all accredited PCWs to display all tariffs as a default was an important step towards simplifying the consumer engagement message on use of PCWs. Based on our previous research findings into PCWs, we would have encouraged consumers to check results on more than one site to ensure they were getting an accurate view of the tariffs available in the market.

We will shortly be publishing a report looking at consumer advice and redress in the energy sector (not yet published but attached in confidence). Complex policies require complex messaging and this turns off many consumers. The research revealed that, in 2014, nearly 815,000 requests for energy advice were made by domestic consumers and over 2,000 by micro-businesses.²¹ Analysis shows:

- Saving energy was consumers' primary reason for seeking advice, followed by securing the best deal. The increasingly technical nature of energy efficiency measures is likely to drive future advice needs.
- Securing financial assistance was by far the most important way of getting the best deal – even more so than identifying the best tariff – but new smart meter tariffs,

²⁰ 'Understanding consumers on low incomes,' CMA, 10 July 2015. <http://tinyurl.com/pjywazo>

²¹ Data used was from Energy Best Deal Extra, EHU, Citizens Advice consumer service, Home Heat Helpline, ESAS, Nest, HES, RES, BESN and MCS.

service bundling and collective switching may increase demand for this type of advice.

To switch to a better deal, consumers need to be clear about their energy needs and what different tariffs will cost them. The RMR provided evidence that domestic consumers are confused about energy tariffs, and this was a major obstacle to switching to a better deal. The more confused consumers are about the options available, the greater the need for independent advice. However, Ofgem research indicates that this needs to be free of charge.²² Using an example from the micro-business sector, where there are similarities with domestic consumers in terms of behaviour and protection and advice needs, we find they are less likely than a larger business to use a broker for finding a supplier, partly because they do not think there are sufficient savings to be made, and partly because they perceive an additional layer of cost.

The simplification of both the offers and switching process should reduce the need for independent advice provision. However, tariff/payment complexity is being driven by other government policies aimed at reducing energy consumption – smart meters, micro-generation, and to a lesser extent the Green Deal. This brings into sharper relief the reliability and cost of PCWs, and how well they serve consumer needs.

The smart meter roll out, and the increasing take-up of electric vehicles, are likely to lead to a future proliferation of time-of-use tariffs. Unless the industry proactively matches consumers to their optimal tariff, consumers will need to develop a sophisticated understanding of their energy needs or seek independent advice and support. The potential for these services to be provided by increasingly sophisticated, regulated intermediaries could add a further layer of complexity and cost to these transactions. In this situation, preserving clarity and comparability of complex time-of-use offers, for example by standardising time bands, should be a priority.

The current trend towards bundled multi-utility offers and the bundling of power with energy efficiency measures adds a further layer of complexity to securing a better deal. It also expands the opportunities for detrimental and complex redress procedures if the switching process is problematic, or if there are problems with the products, their installation or performance.

A further complication to tariff choice is the emergence of green and renewable tariffs. These offer another reason for tariff choice beyond price but Ofgem 2014 research found consumer awareness and understanding of green tariffs to be very low, again driving the need for advice.²³

²² 'Small and medium business consumers experience of the energy market and their use of energy,' Ofgem, 28 June 2011. <http://tinyurl.com/o8nmw9b>

²³ 'Research into consumer understanding of the green and renewable tariffs market,' Ofgem, 27 June 2014. <http://tinyurl.com/p5o7grp>

(c) We note that if this remedy were to be imposed, Ofgem's Confidence Code requirement for PCWs to provide coverage of the whole market appears likely to become impractical as the number of tariffs offered increases and PCWs agree different tariff levels and commissions with energy suppliers. Should this element of the Confidence Code be removed, therefore, as part of this remedy? If so, are alternative measures to increase confidence in PCWs required? For example, in order to maintain transparency and trust, should PCWs be required to provide information to customers on the suppliers with which they have agreements and those with which they do not?

Citizens Advice do not agree with the proposal to remove the Confidence Code requirement to default to a whole of market comparison as we believe this would be to the detriment of consumers. The recent CMA and FCA investigation into the motor insurance sector found shortfalls in PCWs information provisions.²⁴ We are concerned this change would lead to compromise of impartiality and accuracy of information, and lead to increased commercial bias as well as undermining consumer trust in the process.

We think it is essential that PCWs continue to list which suppliers they have commission arrangements with.

(d) Rather than removing all limits on tariff numbers and structures, would it be more effective and/or proportionate to increase the number of permitted tariffs/structures? If so, how many should be permitted and which tariff structures should be allowed?

(i) For example, would requiring domestic energy suppliers to structure all tariffs as a single unit rate in pence per kWh, rather than as a combination of a standing charge and a unit rate, reduce complexity for customers, while avoiding restricting competition between PCWs? Alternatively, would such a restriction on tariff structures have a detrimental impact on innovation in the domestic retail energy markets?

We remain broadly content with the current requirement of tariffs to be composed of a standing charge and unit rate(s) provided derogations are available for selected groups of consumers. See our response to Remedy 3a for more detail.

We have previously advocated a further transition towards single unit pricing, with an Ofgem set standing charge, as a means to further improve tariff comparability and consumer understanding. This would involve significant changes to network charging, debate around which costs should form part of the standing charge versus the unit rate, etc. We do not think the blanket introduction of a new tariff structure of a single unit pricing is desirable as it would increase risks for suppliers, would be likely to increase costs for certain groups of consumers, some of whom are financially vulnerable, and could result in a general levelling up of prices.

²⁴ <http://tinyurl.com/k4rjko8> and <http://tinyurl.com/lmlj8ml>

As an organisation, we have deliberately chosen not to prioritise a shift to the introduction of simpler tariffs, in order to focus on the need to provide additional targeted price supports for more vulnerable households. Existing PCWs and new tools such as Next Generation Intermediaries ('NGIs') could and should increase engagement levels amongst a growing group of consumers. They remain unlikely to support or assist the group of consumers who cannot or do not switch and for whom energy affordability remains a real problem.

If there is appetite for the fundamental rebalancing of tariff structures and supplier prices, we would advocate that the prime beneficiaries of this work should be those households who cannot or do not engage and who cannot afford their existing energy bills.

Remedy 4 – Possible measures to address barriers to switching by domestic customers

Following several positive pronouncements from DECC, we have been encouraged by the work Ofgem has carried out over the past few months to move the market towards one day switching. When the initiative comes to fruition (planned for 2018/19) it should facilitate heightened competition. However, policy makers need to ensure that switches on this basis are reliable and that messaging reaches hitherto dormant parts of the market, so that vulnerable households can benefit. Delivering this will require industry-wide buy in and collaboration, and we hope that the second version of Ofgem's Target Operating Model for one day switching will clarify how consumer journeys will be made as smooth and positive as possible.

Clearly, accurate bills and enabling consumers to take control of their consumption through the rollout of smart meters is central to this work. However, with some estimates as to the number of households that will refuse smart meters as high as 20%, systems will need to cater for existing metering arrangements also. In addition, teething problems for smart meters may affect the ability of those living in multiple dwelling units, areas with patchy connectivity and people with older SMETS1 meters from benefitting.

Even if a near-full smart meter rollout does remove certain barriers to faster switching, there is a risk that it creates others. A large part of the value proposition of smart meters in DECC's impact assessment is based on the presumption that a large number of consumers will switch to time-of-use tariffs, but these are likely to be a complex proposition, and could make the marketplace even more confusing than it already is. Some consumers may be drawn onto time-of-use deals that are unsuitable for them because they are unable to adapt their energy usage, others may be put off switching at all. The most vulnerable consumers are currently the least likely to switch. If this pattern remains the case after the rollout of smart metering they may not benefit from the programme.

Although quicker switching would bring considerable consumer benefits, there is little evidence to suggest that the time it takes to switch is the main factor in consumer disengagement in the market. Mistrust of the energy industry, complexity and lack of certainty of benefits all play into a consumer decision to switch or not switch. Rather than continually using sticking plasters to try and address this issue, it may behove industry to reassess how people interact with switching services and fundamentally change their processes and offering accordingly. The work being carried out by Citizens Advice to probe the consumer Hierarchy of Priorities could play a crucial role in helping to shape such changes.²⁵

Remedy 4a – Measures to address barriers to switching by domestic customers

²⁵ This work looked at how consumers engage with markets and asked whether there is a hierarchy of priorities when it comes to how much time consumers make for shopping around in different markets. Please see <http://tinyurl.com/q7v9o5r> for further details.

(a) Will the roll-out of smart meters address the feature of uncertified electricity meters? If not, what additional remedies should we consider to address this feature?

As the mass rollout of smart meters takes place uncertified meters should become less of an issue, as all non-SMETS compliant meters will need to be replaced, regardless of whether they are certified or not. Access to replace meters is a potential issue, and we would not want to see excessive or unnecessary use of warrants to replace meters.

We consider that if a consumer finds that their meter needs to be replaced soon after switching supplier, this could make their experience of the switch less positive. This should be avoided; our report, 'Switched On'²⁶ found that around a quarter of consumers who switched would not consider doing so again due to the process being difficult or off-putting. However, it is worth noting that in this circumstance the meter replacement is not an additional requirement for the consumer, but rather a delayed requirement which should have been carried out by the prior supplier.

After the smart meter rollout, the replacement of meters could be more disruptive for consumers, because these may be more interlinked with smart appliances and consumer access devices ('CADs') in the consumer's home. Suppliers may need to consider the support they give consumers when smart meters are replaced at the end of their certified lifetime, in order to reduce poor consumer experiences.

There should be a number of relatively simple options already available to mitigate the impacts on consumer experience. The new supplier should clearly communicate to consumers that the meter replacement is unrelated to the switch of supplier, and that this should have been carried out by their previous supplier.

(b) Will the roll-out of smart meters address the barriers to switching faced by customers with Dynamic Teleswitched (DTS) meters? If not, what additional remedies should we consider to address this feature?

It is our understanding that customers with existing DTS meters will receive a variant smart meter as installing a regular meter would, in many cases, required the entire property to be rewired. The smart meter should provide greater functionality. However, suppliers may not be willing to invest time or money in developing new tariff options for a relatively limited group of consumers. We suspect that any new entry to this market segment will come from a limited number of niche suppliers only.

(c) Should PCWs be given access to the ECOES database (meter point reference numbers) in order to allow them to facilitate the switching process for customers? (i) To what extent would this reduce the rate of failed switches and/or erroneous transfers?

(ii) Are there any data protection issues we should consider in this respect?

²⁶ 'Switched on? Consumer experience of energy switching,' Consumer Focus, January 2013. <http://tinyurl.com/padwfdw>

(iii) Will access to this database still be relevant once smart meters have been introduced?

We are comfortable with Confidence Code accredited PCWs being given access to ECOES for the purpose of helping resolve switching problems.

Giving PCWs access to the ECOES database would mitigate one cause of erroneous transfers, since at present switching sites cannot verify the meter information entered by consumers, and therefore may pass it on to the relevant suppliers in an inaccurate or incomplete form. However, this kind of error would not be removed completely. Suppliers currently have access to ECOES and use it to 'triangulate' meter data at the point of switching against the records held on the Meter Point Administration Services (MPAS), but errors still occur.

Even if PCWs' contribution to erroneous transfers could be eliminated by allowing them access to ECOES it is not possible to say how large an effect it would have, because detailed information on the cause of erroneous transfers is not available. There is only anecdotal evidence that the PCW problem is a contributing factor.²⁷ Addressing this would certainly not be enough to solve the wider problem.

Whether access to the ECOES will still be relevant depends on how the Central Registration System is designed, and this has still not been decided by Ofgem. This system might or might not absorb the role and contents of the ECOES. In any case it seems likely that access to the ECOES or an equivalent database will continue to be an important issue.

(d) Should there be penalties for firms that fail to switch customers within the mandated period (currently 17 days, next day from 2019)? How should these penalties be administered? At what level should the penalties be set? Should customers who suffer a delayed or erroneous switch receive the penalty as compensation?

The current mandated period for switching customers as per standard electricity and gas supply licenses is 21 days (this excludes a 14 day cooling off period). At the beginning of this year, DECC announced it had secured agreement from 12 energy suppliers to implement 17 day switching to go beyond license conditions. However, this is not a market-wide standard and at least one of the traditional 'Big Six' suppliers still does not adhere to this timeframe. Given the direction set by Ofgem and aspiration for one day switching by 2019, this is clearly somewhat disappointing and it follows that policy makers would be prudent to place sharper incentives on suppliers to go further, faster on switching. The issue was brought into even sharper relief by the emergency budget in July, with George Osborne announcing the Government's intention to move the time frame for one day switching even further forward, to 2018.

Penalties for non-compliance with switching in the mandated period would be a welcome development. Given it is consumers that feel the detriment from unacceptably slow or botched switches, we would favour any compensation going back into their pockets. We

²⁷ For example, see page 38 'Electricity data quality report,' MRASCo and Elexon, 3 December 2014. <http://tinyurl.com/pqb6eey>

would suggest that an automatic payment under the Guaranteed Standards framework would be the most simple and effective way to introduce this measure. The level of the penalty should include a baseline payment, with provision for additional compensation built in on a sliding scale depending on how long the switch is delayed for. Payment should be automatic, noting that any requirement on the consumer to have to actively claim would be likely to both inconvenience them further and dilute the incentives on suppliers to get things right.

Given industry is currently developing a Switching Guarantee to mirror a similar exercise in banking, we would favour highlighting the compensation clause to ensure that consumers who were reluctant to switch have confidence that they will not be left worse off, come what may. The existence of penalties should also incentivise suppliers to ensure the quality of the data held on meter supply points, which can often be poor.

We are optimistic that erroneous switches will naturally decrease when industry places gas and electricity metering information on Central Registration Systems, as is currently the plan to enable one day switching. However, delays to the switching process are also caused by a number of other factors, and the supplier objections process was subject to a request for information recently by Ofgem. It is our view that supplier objections are a block to consumers receiving competitive deals in many instances, and that they are therefore detrimental to competition in the energy market. In addition, we have seen multiple instances where the system has been used in an inappropriate way by suppliers, compounding the problem and deterring consumers from engaging in the market. For the energy market to be truly opened to quicker and easier switching, we would favour debt-related objections at least to be reformed significantly or abolished.

(e) When next-day switching is introduced, will a 'cooling-off' period still be required? Could it be avoided by requiring that no exit fees are charged within two weeks of switching?

Indications from the government and regulator are that the cooling off period will still apply when next day switching is introduced; work is currently being carried out by industry to establish how this will operate in practice.

When making policy in this area it is important to keep in mind consumer confidence and journey. To be successful switches should be quick and efficient, involve little effort from the consumer and not deter them from future forays into the market. To this end it is important to recognise that the cooling off period for one day switching is about more than exit fees. It allows the possibility for continuous billing, can ensure consumers are switched back to their original terms rather than the SVT, and can give additional comfort to wavering customers.

In order to ensure switching in the cooling off period operates to consumers' benefit, it needs to be ensured that industry has the processes in place to deliver the above benefits. It also needs to be made clear that the cooling off period is not simply a chance for suppliers to win back former customers and that consumers should benefit from their new tariff rate as soon as they switch, even if it means asking one supplier to bill on behalf of another. Extending

this logic, the current requirement for final bills to be sent out six weeks after account closure is clearly inadequate in a world of quicker switching. We favour this time period being hemmed in significantly to enable swift resolution for consumers, and expect such a move would have knock on benefits for household budgeting.

A further observation is that much of the debate around making energy switching quicker has often focused on looking at ways to scrap or reduce the cooling off period - or find ways to encourage consumers to waive it. In effect, to deliver a speedier transaction by reducing or removing some consumer rights to protection if things go wrong. That this would result in a time saving is only the case because in energy the cooling off period is ex ante - it needs to expire before the consumer is switched. In many, though not all, other retail purchases consumers enjoy ex post cooling off periods rather than ex ante ones. Aside from conventional retail products (i.e. over the counter purchases) this also extends to many financial products like insurance. Ex ante cooling off periods constrain consumers ability to cancel if a transfer goes wrong, or if their early experience of their new supplier is poor. They therefore reduce some quality of service incentives on suppliers. They also delay delivery of the new service, which may leave consumers out of pocket given that the primary reason why consumers switch is to save money. The CMA may wish to consider whether it would be more appropriate to have an ex post cooling off period rather than an ex ante one.

(f) Are specific measures required to facilitate switching for customers living in rented accommodation (either social or private)?

We are aware that some tenancy contracts prevent switching or put up unreasonable barriers, such as requiring consumers to switch back to the original supplier at the end of their tenancy. Unfortunately there is limited scope for Ofgem to address this problem.

In theory, faster switching times should make it more worthwhile for this group to switch.

We also run ongoing outreach programmes including Energy Best Deal and Big Energy Saving Network, both of which seek to target these groups of consumers. We can explore whether our messaging can be further refined to encourage engagement from these groups of consumers.

Citizens Advice research on PPM self disconnection in a 2013/14 omnibus survey found that over a third of consumers with a PPM were renting their home from a local authority (44 per cent, compared to 18 per cent of the overall population renting social housing) and 15 per cent were renting privately (compared to 13 per cent of the overall population).²⁸ PPM consumers have historically had low awareness/engagement in the market, for various reasons as discussed as part of the other remedies proposed by the CMA. As any part of any remedy to encourage more engagement from these consumers housing tenure should be considered alongside payment method in order to more effectively target these consumers and encourage them to switch.

²⁸ ONS Housing social trends. <http://bit.ly/1qTKnVd>

(a) Does the 'Midata' programme, as currently envisaged, provide sufficient access to customer data by PCWs to facilitate ongoing engagement in the market? Should PCWs – with customer permission – be able to access consumer data at a later date to provide an updated view on the potential savings available?

Citizens Advice has had a long engagement with midata, and is supportive of the principle of consumers accessing and control of their own data with the potential for improved outcomes by utilising that information to make better choices, and possibly drive greater competition across market. Our recent report on Personal Data Empowerment explored these issues, setting out our vision and the key principles needed to ensure consumer benefit.²⁹

Consumers interact with data collection and use across all markets and have low levels of trust. The CMA's recent report on the commercial use of consumer data recognised this problem and set out steps to rebuild or develop consumer confidence.³⁰

Third party intermediary (TPI) services are an important element of the midata programme (and are likely to become one in the smart meter rollout too) which will enable it to fulfil its potential, beyond that of data release by suppliers direct to consumers, by offering consumers new ways to get value from their data.

The ability for a TPI to have permissioned periodic access to data in order to suggest new offers will be useful in taking some of the burden away from consumers of continually searching markets for a better deal every year or two. This will also help to avoid consumers being automatically put onto a standard tariff when their current deal finishes.

Our next generation intermediaries report³¹ highlighted consumer benefits from NGIs' capability of going beyond identifying and obtaining the best tariff, to potentially becoming a one stop shop for associated services that are relevant to the market in question. For example, NGIs could continually monitor a market in line with criteria set by the consumer; and allow the consumer to fully delegate engagement and decision making (should they choose to do so), offering advice on energy efficiency measures, time sensitive consumption data analysis from smart meter in the gas and electricity markets, etc. However such ongoing relationship with a much more responsive and personalised experience would require PCWs to be able to have an ongoing relationship with customers free of restrictions imposed by energy suppliers.

In order for these types of services to develop, demonstrating trustworthiness will be as important as the services on offer being convenient and saving money. This goes far beyond establishing 'customer permission', which has not so far engendered trust or increased take up. Consumer Futures research into PCWs found that consumers tend to use PCWs to research deals, but do not take up the offer to facilitate a switch on their behalf as they do not have trust in the intermediary. The main fear cited is that their data will be used for marketing purposes. Services meet Data Protection Act requirements, but these

²⁹ 'Personal data empowerment: time for a fairer data deal?' Citizens Advice, April 2015. <http://tinyurl.com/poxmgfr>

³⁰ 'CMA publishes findings on the commercial use of consumer data,' CMA, 17 June 2015. <http://tinyurl.com/q3qp95x>

³¹ 'Next generation intermediaries,' Consumer Futures, 2014. <http://tinyurl.com/mj5oad9>

are still not enough to reassure trustworthiness in eyes of consumers and enable bigger take up.

The potential for consumer participation in an ongoing or periodic service as suggested here is dependent on certain conditions. Consumers say they would provide more information to services if:

- o the service was better tailored to their needs (60%)
- o if it helped make better decisions (56%)
- o if it helped save money (71%)
- o BUT: 71% of consumers said they would only provide more information if they were sure it would not be shared on further³²

This is because consumers' experience has led them to be concerned and unhappy with current data collection and use model:

- o 88% say they are concerned about protection of personal information (ICO annual tracker 2013)
- o 71% of the UK population are not confident in the way that companies collect, use, handle and share data³³
- o 49% are unhappy with targeted marketing³⁴

Behaviours do not always reflect these concerns, but this may be because there is often little practical alternative to 'tick, click and hope for the best'.

Research for the Department of Business, Innovation and Skills into the concept of midata with consumers showed that considerable reassurance is required with regards to personal data driven services if consumers are to make use of them. They identified that trust could be reassured by knowing:

- o how data security and protection against data misuse will be ensured
- o how consumers can retain control of how their data will be shared and used
- o who is behind the initiative and who will keep it honest
- o how it will be funded or what is basis of business model³⁵

If companies cannot meet consumer expectations of trustworthiness it may impede consumers from engaging with NGIs despite potential financial or time savings.

(b) Do customers need more or better information or guidance on how their new smart meters will work?

Yes. DECC's early learning trials have identified the need for more targeted information for different groups of consumers.

³² GfK (2013), 1,019 interviews conducted with a representative sample of online consumers between 7th-11th Feb 2014 in <http://tinyurl.com/qdfyf3>

³³ 'Data nation 2013: balancing growth and responsibility,' Deloitte LLP, 2013. <http://tinyurl.com/q68xbgu>

³⁴ Ibid.

³⁵ 'Potential consumer demand for midata. Findings of qualitative and quantitative research,' Jigsaw Research. <http://tinyurl.com/pc7hfyk>

The vast majority of quantified benefits to consumers identified in DECC's latest impact assessment (over 99%) come from consumers being able to reduce their energy use³⁶, this reduction will only be generated if consumers are confident in their ability to use their smart metering equipment and the services and tools enabled by it - particularly In Home Displays (IHDs). Reflecting this the Smart Metering Installation Code of Practice (SMICoP) requires installers to not only install but also demonstrate and explain this equipment to ensure that consumer are able to realise these benefits.

During the foundation stages of the smart meter rollout the Citizens Advice Consumer Service has continued to hear from consumers with experiences that demonstrate that this approach has been lacking. This includes consumers who describe being left with devices they do not understand, requesting explanations not only of how to operate them but what they are. Clearly these consumers are unlikely to see the benefits on which the smart meter rollout has been predicated.³⁷ This is even more of a concern given findings from DECC's Smart Meter Early Learning Project, which highlighted a good installation experience as crucial to realising the benefits of smart meters.

Following an Information Request probing how suppliers are planning to engage vulnerable consumers in the rollout³⁸, we found significant disparities in training to identify issues and provision of materials and services between different companies. Based on these results, we are concerned that some vulnerable consumers will not benefit from the programme. In order to mitigate this risk, we are calling on the Government to work with industry to monitor the impact of the rollout on vulnerable consumers and adapt plans accordingly. In addition, there is currently little evidence of tailoring for energy efficiency advice suppliers give as part of the programme and no consideration is given to the condition of the property.

We have also repeatedly called for an extra help scheme for vulnerable consumers to ensure that they too benefit from a smart meter rollout which all consumers will pay for - this is likely to be particularly important for consumers currently using pre-payment meters who tend to already have a high awareness of their energy usage and take active steps to ration it.

³⁶ 'Impact assessment: smart meter roll-out for the domestic and small and medium non domestic sectors,' DECC, 30 January 2014. <http://tinyurl.com/o2h9ub4>

³⁷ It should be noted that many of these experiences will relate to installation of non-SMETS 'smart' meters which are not technically subject to the SMICoP. Given that consumers are largely unaware of this distinction and have been told they have a smart meter this distinction, while significant from a compliance perspective, is meaningless to consumers.

³⁸ 'Vulnerable Consumers and the Smart Meter Rollout - analysis of information request,' Citizens Advice, July 2015. <http://tinyurl.com/o3buoar>

Remedy 4b – Removal of exemption for Centrica on two-year inspection of gas meters

(a) Would this remedy be effective in removing the distortion to competition that currently exists as a result of Centrica's derogation on the inspection of gas meters?

The option for a derogation from the meter inspection arrangements has existed since Ofgem's Supply Licence Review in 2006. Centrica developed a risk based inspection approach which successfully met the standards required by Ofgem and the Health and Safety Executive to maintain consumer safety, while also reducing costs. We note that that current consultation on potentially repealing the two-year rule for all suppliers includes some detailed analysis on the risk case.

Clearly this option was open to other suppliers to pursue, if they felt it was advantageous to do so. The reasons why they have not are unclear. Some suppliers have suggested to us that it is too soon to undertake such a move given the relatively early stages of the planned rollout of smart meters.

It is also unclear if the costs savings currently being enjoyed by Centrica are being fully passed on to British Gas customers. It seems likely however that the savings made have given the company a competitive advantage, albeit a fairly limited one.

(b) Would it be preferable to remove Centrica's derogation, or extend the derogation to other suppliers?

We do not favour either removing the derogation for British Gas or extending to other suppliers. We consider that the removal of the derogation could increase the cost of supply to British Gas customers, with no associated increase in quality in terms of safety or theft prevention. On the other hand, we are yet to be fully convinced that the automatic extension of the derogation³⁹ to all suppliers would be in consumers' best interests. The safety case would need to be made by individual suppliers to reflect their significantly different stages of smart meter rollout.

Centrica's derogation is due to expire in March 2016. Ofgem's review of the ongoing meter inspection arrangements will be completed prior to the expiry of the derogation. This review relies strongly on the experience of Centrica's risk-based approach, and should produce new arrangements which are appropriate for the mass adoption of smart meters and do not limit detection of theft or meter tampering. The best approach is to allow Ofgem's review to continue as planned, with no changes to the derogation until it is completed. Our full response to that consultation will build on the answers given here.

(c) If Centrica's derogation were removed, should it be phased out over a period of time? If so, how long should Centrica be given in this respect?

³⁹ Or repealing the rule completely, as Ofgem is minded to do.

Removal of the derogation would seem to be impractical over the short timeframe between the publication of the final energy market investigation report at the end of 2015 and the expiration of the derogation in March 2016.

Remedy 5 – Requirement that energy firms prioritise the roll-out of smart meters to domestic customers who currently have a prepayment meter

We are pleased that the CMA has recognised our concerns that prepayment meter users are not very well served by the current energy market. Our Fair Play for Prepay campaign urged suppliers to prioritise the rollout of smart meters to prepayment meter users as the additional functionality they offer should help to improve service, price and choice, and perhaps most importantly should reduce the overall cost of prepayment as specialised meters will no longer be required to deliver it. Smart meters should change the way prepayment users interact with their energy supplier - introducing new ways to top up, making it easier to monitor energy use and reducing any costs associated with the ease of moving between prepay and credit functions. Our understanding is that, based on suppliers' current plans, we would not expect to see significant deployment of new smart PPMs until 2018⁴⁰.

Citizens Advice has called for suppliers to ensure prepayment meter users are not left behind and are not the last to benefit from the smart meter rollout; however there need to be robust smart PPM technological solutions that have been fully tested, as their users are more vulnerable to technology or top up failure - the latter of which we have already seen some examples of, albeit with non-SMETS compliant 'smart' meters. Similarly the costs of the rollout will be high and we would not want to further increase the costs unless there would be an overall net benefit to these consumers. There is certainly scope for suppliers to further prioritise these customers within their rollout plans and it is essential that they do so. Any prioritisation of smart PPM customers should consider the risk that this could result in prepayment meters being predominantly replaced with SMETS1 rather than SMETS2 meters, without full smart functionality.

As there is a strong correlation between PPM usage and low incomes / stickiness, we believe our proposals for introducing additional tariff support for a targeted group of vulnerable consumers would be appropriate to provide additional transitional support to some PPM users.

(a) Would this remedy be effective in allowing prepayment customers to engage fully in the market and benefit from a wider range of tariffs? Would it be effective in reducing the costs of supply to prepayment customers?

Smart PPMs should make engagement easier and deliver a range of new benefits to current PPM users. We are hopeful that the cost to serve will fall as new technological solutions are developed and because PPM charges will no longer include the costs of installing and procuring a different type of meter. If prepay becomes a more attractive option to a wider range of consumers, this should further reduce costs.

⁴⁰ Though it should be noted that some small suppliers have focussed on installing 'smart' PPMs though frequently non-SMETS-compliant ones resulting in a notable number of contacts to Citizens Advice from consumers where the technology has failed (e.g. failed top-ups) and perhaps even more alarmingly where consumers have found themselves unable to switch as no other suppliers' installers are able to work with - or even safely uninstall - these meters which were sold to consumers as 'smart'.

As recognised by the CMA, PPM users are disproportionately more likely to be vulnerable and/or have low incomes. This remedy will only be effective if prepay smart meters are accompanied by an increase in tariff options and most importantly, a decrease in the price differential that PPM customers currently experience.

(b) Which version of this remedy would be more effective and/or proportionate?

We support the intention of this remedy. However we would need to see an impact assessment on the potential cost and benefits of changes to supplier rollout profiles to speed up the installation of smart prepay meters before deciding on a preferred option. The overarching concern here is that these consumers are not left to last.

As the smart meter rollout progresses, the incentives to install 'dumb'/ standard meters should decrease and instead there will be an incentive to install a smart meter on any meter exchange (be it a PPM installation as a debt collection measure or installation as part of the rollout). We are however concerned about some installers plans to install non-SMETS compliant meters and then 'upgrade' them at a later date (which could potentially be any time up to the end of 2020) - consumers with such meters risk not receiving the full benefits of smart metering until the very end of the rollout and also seem unlikely to benefit from a retroactive explanation of their smart metering equipment and offer of an IHD in line with the SMICoP.

(c) Would any additional or alternative measures be required to ensure that this remedy comprehensively addressed the overarching feature of weak customer response arising in particular from those with prepayment meters?

The installation of smart meters should result in an improved service and increased competition with the introduction of competitive, cheaper tariffs for smart PPM. However, there is no indication that suppliers will introduce more/different prepay tariffs any sooner if they are obliged to expedite the installation of smart meters in prepay mode. Despite the potential for benefits from smart metering, in terms of the ability to offer improved services such as new top-up methods or additional tariffs, current problems highlight that it is not enough to assume that smart meters will fix the issues that PPM users have.

PPM consumers are an underserved segment of the market characterised by limited innovation, poor service and weak competition. Self-disconnection from energy supply is the most visible indication of a market that is failing some consumers. Citizens Advice has called on all suppliers to produce consumer offers for affordable and flexible prepayment tariffs, to improve the service these consumers receive and reduce the prices they pay. The government and regulator must work together to ensure that the benefits of smart prepayment are delivered, alongside programmes to improve energy efficiency of homes and opportunities for income maximisation (for example benefits checks). Arguably, PPM customers are least likely to trust the switching process and engage with smart meters - not least because they are already very aware of their energy usage (in both KWh and monetary terms) due to their payment method. If the CMA pursues a market remedy to install smart

PPMs early it must be accompanied by a requirement for more consumer education and links to other supportive initiatives for PPM consumers to engage with the market and ensure they are on the best deal, as well as work to ensure that technical issues such as top-up failures do not occur.

In addition to addressing the legacy problems with prepayment, there is a risk that smart meters create new disparities that disadvantage a very similar group of consumers, undoing the progress that is made. In particular, if a large part of the benefits of smart meters are associated with time-of-use tariffs or other complex offers, as DECC's impact assessment suggests, then these may be less attractive to less engaged / more vulnerable consumers. This would create a similar situation as has developed with prepayment, where the consumers who are least able to pay and least likely to switch end up paying more. To prevent this, there should be an emphasis on ensuring new offers with smart meters are not over-complicated and are open to all, without undue reliance on online services as some consumers do not use them.

(d) What issues may arise as a result of prioritising the installation of smart meters in the homes of customers who currently have prepayment meters?

Provided the technological solution was robust, these consumers should receive a better service and have more choice once smart meters are installed. However, if there are any technical teething problems, then this approach would expose prepayment customers to the highest risk. In particular we have serious concerns if this approach leads to prepayment customers disproportionately receiving SMETS1 as opposed to SMETS2 meters, and therefore missing out on full functionality and the ability to easily switch supplier and retain smart functionality. This would create a knock-on need to upgrade these consumers to SMETS2 as a matter of priority. We have already seen instances of pre-SMETS 'smart' PPM meters causing issues with remote top-ups earlier this year.

(e) Would it be more effective and/or proportionate to require energy suppliers to accelerate the roll-out of smart meters across the retail markets as a whole, in order to facilitate engagement more broadly, rather than focusing on customers on prepayment meters?

The rollout of smart meters is already set to operate on very tight timescales which generates some potential risks which would potentially be exacerbated by an even faster rollout:

- A rush to sign-off, update and implement smart metering equipment technical specifications (SMETS) leading to issues around security, interoperability, interchangeability etc. as not enough time was put into ensuring all of these work
- Suppliers eager to achieve their rollout goals incentivise installers on speed above quality of installation visit, resulting in several potentially negative outcomes:
 - Unsafe installations

- Installers not informing consumers of what they are doing or how they can use their smart metering equipment (including IHD) to save money - thus eliminating the bulk of the identified consumer benefits of rollout
- Failures to identify inappropriate installations, for example difficult to reach meters, vulnerable consumers etc.
- The need for qualified installers within a tight timeline results in increasing costs for installers as they become increasingly in-demand, this may also negatively impact the ability of smaller suppliers to procure the necessary workforce.
- The training of qualified installers being rushed resulting in less competent installers
- A lack of time for suppliers to learn lessons and improve consumer experience or make their own processes or procured equipment more efficient or effective
- Increased costs for related services like the DCC - delays in which have significant knock-on effects with the apparent need for speed also increasing the costs charged by the DCC
- Suppliers eager to meet deadlines install smart meters in areas where the communications infrastructure is not yet able to support them - resulting in consumers not seeing benefits and being disillusioned with the rollout more widely.
- A lack of time for proper engagement with consumers, resulting in higher refusal rates, more missed appointments and a general lack of awareness or understanding of smart metering by consumers.
- An increased number of SMETS1 meters being installed instead of SMETS2 and the associated impact on change of supplier and retaining smart functionality.

There is of course a balance to be struck, inevitably some consumers will not receive smart meters, and therefore not see all the benefits of them, until the end of the rollout. Extending the timelines inevitably extends the length of time consumers will have to wait to receive the benefits of a programme they are paying for now.

There is also a risk that specific types of consumers be left to last resulting in disproportionate detriment. Steps should be taken to ensure that consumers living in Multiple Dwelling Units or those on prepayment should not be disproportionately disadvantaged by such a delay.

Remedy 6 – Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers

We agree that the provision of robust independent price comparison services should aid consumer trust. However we would question whether Ofgem's stewardship of the Confidence Code introduces a potential conflict of interest.

The Citizens Advice Service has a high brand awareness amongst the consumer groups least likely to trust or use a traditional PCW.⁴¹ As a result, we are planning to introduce a new domestic price comparison service later this year. We will be working through a white label partner to provide full market comparisons. Given our formal role as the statutory consumer champion, we believe we could encourage additional suppliers to list their prices on our website. Not all suppliers are currently using PCWs as they cannot afford to pay the proposed commission rates and/or are unable to safely handle the volume of customers that would come through a PCW if their prices were top of the table.

We currently provide advice and support to consumers online, by telephone and through face to face channels. Whilst other PCWs currently provide online and telephone services, our face to face role makes us unique. We also currently run outreach programmes including Energy Best Deal and Energy Best Deal Extra which aim to educate, inform and empower energy consumers to engage in the market. Operating a price comparison service using an assisted digital approach is a good fit with our existing services to energy consumers.

We would be happy to provide further details to the CMA about our plans in this area separately.

Regarding the CMA's paper on price comparison websites, we cannot tell whether the CMA received evidence from the smallest suppliers. The conclusions appears to be based on the experience of the largest and current mid tier suppliers. We would suggest that the experience of the smallest suppliers is different as they hold much more limited market power. We have also been told by some very small suppliers that the commission rates they've been quoted by PCWs were substantially higher than the 'average' £15-35 commission rates. Therefore these suppliers are either required to list their tariffs for 'free' or use more cost effective, but often riskier, sales channels. Given the strong connection between PCWs use amongst more engaged consumers, this can be barrier to growth. Many consumers would prefer to switch to a tariff that is fulfillable on a PCW.

We suspect the experience of these very small suppliers may be missing from the CMA's analysis as they have not had the resources available to engage with the market investigation.

We do not agree with the CMA's view that the requirement to list all tariffs is a too stringent condition. Removing the requirement to list all tariffs could further decrease trust in PCWs to

⁴¹ It is worth noting that currently consumers have little awareness of Ofgem's Confidence Code. See page 38, 'Confidence Code review - decision,' Ofgem, 30 January 2015. <http://tinyurl.com/oy3twil>

limited consumer gain. PCWs which show all available tariffs will be providing consumers with the most accurate information available to help them make a decision on the best option for them.

Given the new Confidence Code requirement only took effect from late March 2015, there is no evidence to date demonstrating that the new requirement has caused harm. Our own research which suggests that many consumers use multi-homing is from 2013 before the new Ofgem requirements came into effect.

The ability of PCWs to innovate and maintain profitability should not come at the expense of consumers' ability to easily engage in the market and trust the results they receive. It should not undermine the consumer protection objective of providing a reliable and unbiased service to consumers. Requiring all PCWs to list all tariffs allows for a clear consumer engagement message: whatever PCW you use, you can be confident the results you receive will be clear, consistent and accurate. Removing the requirement to list all tariffs would require bodies such as ourselves and Ofgem to encourage consumers to use several PCWs to carry out a price comparison. This can be time consuming and not in their best interests.

⁴² Whilst the small percentage of savvy consumers are likely to continue comparing results across multiple PCWs, this messaging is likely to make less engaged switchers drop out of the process.

(a) Would this remedy be effective in increasing customers' trust in PCWs and thereby encourage engagement in the markets and switching?

We believe an independent PCW run by Ofgem would increase consumer trust and could have a positive impact on engagement and switching levels. We also consider that Citizens Advice has an important role to play in this area. Especially for more disengaged and vulnerable consumers who seek face to face advice from our bureaux network or who contact our national telephone advice line. As detailed above, we will be launching a price comparison service this year.

(b) Should this service be online-only, or should it also operate over the telephone for those customers without access to the internet?

In the event that the CMA requires Ofgem to provide an independent price comparison service then it should operate over the telephone as well as online. While the majority of consumers are now online, the most recent Office for National Statistics data suggests that there are still 11% of adults who have never used the internet.⁴³ The same ONS data suggests that internet usage is also lower amongst both disabled and elderly people than the wider population. Your own research suggests that disabled or elderly people are less likely to engage with the market than the wider population. It is therefore important to make sure that any tools that can help engagement with the market are available to these groups.

⁴² 'Price comparison websites: consumer perceptions and experiences,' Consumer Futures, July 2013.

<http://tinyurl.com/p396yg5>

⁴³ 'Statistical bulletin: internet users 2015,' ONS, 22 May 2015. <http://tinyurl.com/nf9c2v5>

(c) Is there a risk that such an independent service could undermine the development of other PCWs in the energy sector? How could this risk be mitigated?

The CMA's data has indicated a strong correlation between the volume of switches processed and the money spent on advertising. It is presumably unlikely that Ofgem would have a large marketing budget and would not therefore have a detrimental impact on the largest PCWs.

Much will depend on the consumer education messages accompanying an Ofgem (or Citizens Advice) PCW. In particular how the ability to facilitate any subsequent switch is communicated, and if that messaging will signpost to PCW or directly to suppliers. All parties - suppliers, PWCs, consumer bodies and Ofgem - should work together to create comprehensive and consistent messaging on price comparison and the change of supplier process to aid consumer confidence.

(d) Should the Ofgem website quote the energy suppliers' list prices only? Or should it seek to provide full details of all quotes available on the market (including on other PCWs), ie function as a metaPCW?

We do not agree that allowing exclusive deals on individual PCWs would lead to good consumer outcomes. If this is allowed then any Ofgem site should seek to highlight all deals in the market so acting as a metaPCW.

(e) How could we ensure that an Ofgem price comparison service was robust in terms of offering all tariffs available on the market? Should there be an obligation on retail energy suppliers and/or PCWs to provide information to Ofgem on their tariffs?

It is essential that comprehensive pricing information is contained within any Ofgem comparison service and provided to consumers. There are currently commercial arrangements in place to obtain historical pricing data, and there is a licence requirement on suppliers to publish prices. Ofgem should be routinely collecting and storing this information in the most cost effective manner.

(f) Should any price comparison service operated by Ofgem be transactional, ie be able to carry out switches for consumers, or should it provide information only?

We would suggest that initially an information only service should be established with a view to moving to transactional based on consumer feedback, a full risk assessment on the impact of Ofgem led switching on wider market participants and the consumer protection and redress needs around such a service.

(g) What would be the likely costs to Ofgem of offering this type of price comparison service? Would Ofgem need additional funding and/or statutory powers in order to provide this type of service? If so, where should this funding come from?

The nature of the service will determine the level of funding required. Information only could be delivered at minimal costs - as our own analysis of providing such a service has shown. If telephone advice and support, or a transactional service, were to be established these would generate greater costs. One option is for industry to cover these through 'commission' type payments on customers acquired through the independent PCW. Alternatively the existing levy funding arrangements could cover the costs.

(h) How should customers be made aware of the existence of this service? Should information be provided by energy suppliers on bills/during telephone calls? Should PCWs be required to provide links to the Ofgem website during the search process to allow customers to cross-check prices?

There should be a requirement for clear signposting to independent help and advice on all market participants. This includes information on PCW services. The proposal to have a facility to cross check prices during price comparison on commercial sites is complex and likely to result in less engaged consumers dropping out of the switching process.

(i) Is there any additional information that Ofgem should provide on its website relating to energy suppliers and/or tariffs to facilitate the customer search and switching process?

Citizens Advice is currently working with Ofgem on the development of a broader set of supplier performance indicators.

From the Autumn we will be publishing additional data to help consumers make informed switching decisions. Our existing company performance league table will be broadened to include all domestic energy suppliers with over 50,000 customers. We will also publish additional company performance data highlighting key issues consumers have told us they are interested in including comparisons of supplier opening hours, available communication channels, frequency of billing, etc. This is intended to provide consumers with a more holistic view of supplier performance alongside information about prices. We would expect Ofgem (and suppliers) to prominently signpost to this information.

Remedy 7 – Measures to reduce actual and perceived barriers to accessing and assessing information in the SME retail energy markets

Remedy 7a – Introduction of a new requirement in the licences of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to PCWs

(a) Would this remedy be effective in increasing price transparency for microbusiness gas and electricity tariffs? Would it serve to make comparisons between different suppliers easier, either directly or by encouraging the development of PCW services for microbusinesses? If not, are there other measures that would encourage this development either as an alternative to this remedy or in conjunction with it?

We think it would increase price transparency and make price comparisons easier. Currently we understand that SMEs are given fairly standardised prices at the relevant point in time when they agree a rate with a supplier (or a third party intermediary/broker). Nevertheless pricing bands are known only to that supplier's employees or their brokers. Forcing disclosure of price lists may facilitate the development of PCW services for micro-businesses.

Comparability of these newly published prices would be key for them to achieve their market-altering potential, thus there is a large role for Ofgem in this process. The regulator already manages the "Confidence Code" that audits domestic price comparison sites and so the necessary expertise could fairly easily be transferred into constructing metrics and standards for this non-domestic price area.

(b) Do microbusinesses have sufficient access to the information they need (for example on their meter types) in order to engage effectively in the search and switching process?

The overly complicated nature of the energy supply market leads to a lack of engagement and confusion amongst the very smallest businesses and other non-domestic organisations – it is simply too difficult to compare rates properly, so many do not bother. Hence the need for published prices and/or PCWs - it is information on pricing itself that is missing for consumers.

(c) How long should energy suppliers be given to provide the required information?

We think the costs of publishing this already existing information would be minimal for suppliers, especially given the potential market benefits. We also recognise that some suppliers do publish some prices already but that there is no consistency or comparability in

this and so the gains for consumers are very limited: all suppliers must publish for the full benefits to be realised.

We consider that this information could be provided and in place within three months.

(d) Should energy suppliers be permitted to fulfil this requirement by providing an automated quoting service on their websites (where microbusinesses can put in their details in order to obtain quotes) rather than a list of prices?

The two approaches are not mutually exclusive: for domestic consumers, information on prices *and* a quoting service commonly feature on most suppliers websites.

However, only requiring a quoting service may frustrate the development of PCW services as the availability of price information is a prerequisite for such services. It may help an individual consumer to check the prices of one supplier, but if they wished to check across the market they would need to visit the website of every supplier and use their individual quoting service. This appears likely to be time-consuming, inefficient and frustrating for the consumer - very much like the current situation.

It would have to be fairly informal i.e. banded to reflect credit variation so as to avoid multiple de facto credit checks and thus impacting on a business' credit rating.

We would consider this approach to be much less likely to be effective than fully publishing of prices and thus a prod to the introduction of PCWs providing a one-stop whole-of-market view of available tariffs.

Remedy 7b – Introduction of rules governing the information that TPIs are required to provide to microbusiness customers

(a) Would this remedy be effective in improving transparency over incentives and trust in TPIs in the energy sector? How could the CMA ensure that this remedy was enforced, ie that TPIs were providing the specified information?

We think it would be effective, though we are more concerned with incentives than trust. Our main concern with the Ofgem proposed code is that it does not fully tackle the commission issue and we know that causes confusion for consumers.

We are willing to play a role in this through our access to the Citizens Advice Consumer Service data; indeed our original work using this data helped precipitate Ofgem's work in this area. To ensure complaints can be properly assessed full call recording is essential; that means the entire conversation when a contract is agreed as a very minimum, with all relevant information included. Complaints generally should be administered as now, initially through the suppliers, using their respective standard procedures. If it is a clear TPI problem then it should be referred back to the TPI with the supplier overseeing.

We also believe that recourse to the Energy Ombudsman would be the most sensible option for complaint dispute as it would make sense to the consumer that all energy supply related complaints could be taken to the same place.

(b) What information should be provided by TPIs to microbusinesses in order to enable them to make informed choices?

All key and material elements of their potential contract i.e. price, duration, cancellation terms, exit fees. Any and all commissions need to be disclosed. TPIs need to make clear how much of the market they are searching and what existing agreements they have in place that may compromise their ability to recommend tariffs i.e. if they cannot offer the cheapest typical rate of a given supplier due to commission payments from others.

(c) Could the provision of certain types of information have unintended consequences (eg customers choosing tariffs based on commission rates rather than total price)? If so, are there any steps that could be taken to mitigate this effect?

Monitoring the impact of any changes is essential. It should be expected that current regulation on standards of conduct should ensure suppliers present deals in a clear and consistent way. Any TPI accreditation should also include this requirement.

(d) Should the specified information be provided to customers in writing or orally (or both)? At what stage in the sales process should this information be provided?

As part of the general first conversation and orally - the consumer needs to know from the start what process their new TPI is following. Full call recordings would also need to be mandated to ensure compliance (and face-to-face where appropriate).

(e) Should this remedy be introduced in addition to Ofgem's proposed code of conduct? Or should only this remedy (or only Ofgem's code of conduct) be introduced?

We support both being introduced, or that Ofgem's code expands its scope and strength to include some of the components of your remedies, especially around commission payments disclosure.

(f) Are there any additional measures that should be implemented alongside this remedy to enhance its effectiveness?

Beyond the aforementioned Ofgem code as it stands (which we fully support), you might like to consider the benefits of all TPIs having advisors with appropriate training and their details kept on central database. In addition, there should be a ban on contracts that stop micro-businesses from contacting their supplier with regard to TPI actions. Suppliers should also undertake a verification call once a contract has been agreed between the TPI and business or full recording of telephone contracts (if necessary); failed contracts should be flagged and recorded centrally.

TPIs are currently unlicensed and there is no direct means by which Ofgem can take enforcement action in instances of poor behaviour or mis-selling. Because suppliers are licensed, they form an alternative enforcement route. We would therefore like to see suppliers only using a TPI if they are code-accredited. It may be appropriate to make this a licence requirement in order to try and drive up minimum standards in the sector.

Remedy 8 – Introduction of a new requirement into the licences of retail energy suppliers that prohibits the inclusion of terms that permit the autorollover of microbusiness customers on to new contracts with a narrow window for switching supplier and/or tariff

(a) Would this remedy be effective in allowing microbusiness customers greater opportunity to engage (by removing the narrow window in which they can choose not to roll-over automatically)?

It would and we therefore support it, we have consistently supported action to prohibit rollovers for several years.

(b) Are there any means by which energy suppliers could circumvent this remedy to continue to lock customers into energy tariffs that they have not chosen for extended periods of time?

Not as long as the rules are enforced. The “locking-in” will only be as long as the time permitted for the notice period (covered in your next question). Nevertheless the standards of conduct would apply here and we would expect no supplier to intentionally circumvent this remedy, given the risk of licence enforcement action being taken if they were to do so.

One issue is the pricing of whatever we term the ‘out of contract’ tariffs consumers get put on in the situations. Businesses should not be subject to punitive terms because they are not versed in the contractual arrangements of non-domestic energy supply. We have long been very concerned about the level and lack of clarity surrounding out-of-contract rates – in particular how the costs relate to the risk of non-payment, and suchlike, when the business has only recently been under contract.

We would still like Ofgem to undertake a review of non-contract prices charged by suppliers as we are far from convinced that they are fair, competitive and accurately reflect risk. Ofgem had previously signalled⁴⁴ that it was planning to review deemed contract rates when publishing its RMR documents in 2013 (and in discussions). We felt, at the time, that further investigation was needed to establish whether the prices were sufficiently transparent and reasonable. We have not seen any evidence that suggests that the situation has improved in the interim.

(c) What is the minimum or maximum notice period that customers should be required/allowed to give in order to exit a contract that they have been rolled on to?

There is a case for no minimum notice period given consumers have not made an active choice to be on such a contract, and they are on uncompetitive prices. If there must be one, then 14 days would seem to be appropriate. The current 30 days notice period on evergreen

⁴⁴ ‘The Retail Market Review: non-domestic proposals,’ Ofgem, 23 November 2011. <http://tinyurl.com/np5mfw7>

contracts used by some suppliers is too long, given that risk is clearly being priced into the high rates also.

In terms of a more general policy response, we propose that (subject to the publication of prices and development of consumer led comparison services) one part-solution would be for suppliers to develop evergreen tariffs suitable for consumers in this small end of the market – evergreen tariffs like most domestic tariffs, whereby there is no contract end date and in most cases the price can go up and down. We are aware that some suppliers have introduced or are developing an evergreen offer for its micro-business customers.

(d) Should energy suppliers be required to inform customers that they are nearing the end of their contract and prompt them to switch?

Yes this is essential to promote engagement in the market and drive competition in price. We cannot see any argument against doing so and thus ensuring that no opportunity is missed to promote engagement, even if that takes the form of consciously staying with a supplier on non-contract rates.

Remedy 9 – Measures to provide either domestic and/or microbusiness customers with different or additional information to reduce actual or perceived barriers to accessing and assessing information

(a) Does the current format and content of energy bills facilitate engagement by customers? Is there additional information that should be included on bills? Should the quantity of information on bills be reduced to enhance clarity?

We believe there should be a research-led review of the regulated content on energy bills to explore what content can safely be removed. Our recent Lost Decade report highlights the growth of content requirements over the year and shows that it has not had a positive effect on consumer engagement levels.⁴⁵ It's an area where we have been active for many years.⁴⁶ We would be supportive of greater use of principles-based regulation here.

We remain supportive of some of the newer information on bills including the cheaper tariff messaging, personal projection and tariff information label. There are some issues with the personal projection where there is variation in the calculations used by different suppliers or PCWs. This is unhelpful and could reduce consumer trust in this measure.

(b) When customers seek to switch tariffs, are they given enough/too much information on the terms and conditions of their new contract?

We are aware that some suppliers have raised concerns about the level of information they are required to provide to consumers signing up via telephone or face to face channels compared to online. Online customers receive the same information but it is likely that most do not actually read the information in depth when they are clicking through to switch.

Consumers rarely read the terms and conditions or privacy notice before ticking the box. This is because the notices are too long, and too complex. Analysis undertaken in 2008 calculated that it would take 76 working days to read every privacy policy an internet user encounters in the course of a year.⁴⁷

A Consumer Futures survey into digital behaviour⁴⁸ showed 32 per cent of consumers claiming they always read the terms and conditions carefully before proceeding. This is slightly higher than other surveys, so we may need to allow for over claiming. The latest

⁴⁵ 'energywatch super-complaint +10: The Lost Decade. Consumer experience of energy billing issues 2005-2015,' Citizens Advice, June 2015. <http://tinyurl.com/pue2h45>

⁴⁶ For example, see 'Consumer Focus Energy Billing Summit: A review,' Consumer Focus, November 2010. <http://tinyurl.com/q3wufcb>

⁴⁷ McDonald, M and Cranor, LF 'The Cost of Reading Privacy Policies', Journal of Law and Policy for the Information Society, Year Review 2008.

⁴⁸ Consumer Futures: Digital Behaviour Survey, SGR 2012.

State of Privacy Report⁴⁹ puts the UK figure at 20 per cent, with other surveys reporting as low as 7 per cent.⁵⁰

In our 2012 digital behaviour survey, 53 per cent admit they rarely read them and 14 per cent say they never do. Those who rarely or never read terms and conditions were asked to rank a number of possible reasons to explain this. 48 per cent of the consumers who rarely or never read terms and conditions feel that they are longer than should really be expected of consumers to read. A further third (34 per cent) put this reason in second place.

We would be supportive of a move towards a more principles-based approach to the marketing and sale of energy contracts. The current licence requirements are very prescriptive, which result in lengthy sale verification processes.

(c) Should customers be prompted to read their meters (quarterly or annually), either by information on their bill or by a phone call from their energy supplier? Would this increase engagement by improving the accuracy of billing?

Suppliers currently use a range of prompts to encourage consumers to supply meter readings including emails, texts as well as information on bills that highlight they are based on estimated readings. We would be wary of introducing a new requirement on suppliers to phone customers who have not supplied meter readings, unless it could be shown that the additional cost to serve was justified by the associated benefits.

The opportunity to offer small rewards or incentives to encourage the regular supply of meter readings appears to be a more proportionate response.

(d) Once customers reach the end of a contract period, should subsequent bills highlight that they have now been moved onto the standard variable tariff and/or other default tariff and encourage them to check whether they are on the most appropriate tariff for them?

If this remedy was introduced then it would make sense to highlight this on energy bills. It should be done by amending the current cheapest tariff messaging.

⁴⁹ 'The State of Privacy Report 2015,' Symantec, 2015. <http://tinyurl.com/pd4t82g>

⁵⁰ Research by investment specialist Skandia, online survey by YouGov of 2002 adults in April 2011, figures weighted and are representative of all GB adults aged over 18.

Remedy 10 – Measures to prompt customers on default tariffs to engage in the market

Citizens Advice is planning to operate a new white label price comparison service. We believe our brand and large network could encourage more sticky customers to engage. See our response to Remedy 6.

We would not support any remedies that require adding further regulated content to energy bills. We think this problem would be better addressed by regular and well funded outreach campaigns such as DECC's recent Power to Switch campaign which could run alongside our existing Energy Best Deal or Big Energy Saving Network outreach work. We would be happy to front such a campaign as part of our role as the statutory energy consumer champion.

Process and informational measures to increase switching are vital and necessary, but it may not be sufficient to get the step change in engagement required to keep the market competitive. Our Hierarchy of Priorities research demonstrates that consumers demonstrate a firm set of priorities for market engagement, within which energy is a low priority because it is uninteresting to the vast majority of consumers.⁵¹

(a) What information should be included in the prompts to customers on default tariffs in order to maximise the chances that they are acted upon?

(i) Should customers who have failed to engage be informed that they are 'no longer under contract for energy', that they have been 'rolled onto a safeguard tariff', or an alternative message, for example, emphasising how many customers in their area have switched in the last year?

If this remedy is implemented then we would suggest the means to do so is via tweaking the existing messaging in the cheapest tariff prompt.

(b) How should prompts be communicated to customers? For example, there is some evidence from the financial sector that text prompts are particularly effective at raising awareness in terms of overdrafts etc.

A range of channels could be used to alert consumers to this situation. Suppliers currently use text messaging when encouraging customers to supply meter readings or to prompt them to get in touch about an overdue bill.

(c) What should be the timing and frequency of prompts in order to balance effectiveness in terms of encouraging engagement with the cost and potential irritation that might arise from repeated prompts?

This would depend on the frequency of billing employed by the supplier. A principles-based approach would be sensible here.

⁵¹ Ibid.

(d) Who should provide the prompts: customers' energy suppliers, Ofgem or another party?

It is possible that PCWs may wish to prompt consumers who have switched through them in the past to consider switching again, particularly where they are aware that the previous switch was to a fixed term tariff that is now expiring. We believe there may be contractual constraints in the relationship between suppliers and PCWs that currently prevent this. Collective switching schemes may be in a similar position.

Existing third party intermediary schemes like Moneysavingexpert.com's Cheap Energy Club can provide an automated price comparison and switching prompt on an opt-in basis. We are not aware of whether such schemes have been effective in reaching previously disengaged consumers.

Collective switching is a welcome innovation to inject buyer power into the energy retail market, with upwards of 170,000 consumers saving in the region of £25 million through collective switches since May 2012. Crucially, these schemes have helped deliver savings to consumers who would not have otherwise engaged in the energy market.

The key opportunity facing this market in our view is encouraging participation among vulnerable consumers, who respond more positively to face-to-face engagement which is sometimes used by these schemes and may respond more positively to an offer tailored to their community and situation.

(e) Are there particular groups of customers who should receive prompts at specific points? For example, should house-buyers be prompted to engage with the market on completion of their purchase?

We are looking at whether consumer messaging could be improved.

(f) Is there benefit in others in the markets, such as rival energy providers or TPIs, being made aware of which customers remain on default tariffs (or have been rolled on to the safeguard tariff)? In this respect, data protection issues would need to be carefully considered. The ability of other market participants to identify inactive customers, however, has the benefit of potentially encouraging the customer to switch tariffs once out of contract.

We have a number of concerns about this proposal. Our key concern is that allowing access to this information to rival suppliers or PCWs would likely result in those parties targeting certain groups of consumers, as opposed to all consumers on the default or safeguard tariff. The consumers most in need of a cheaper tariff such as those on low incomes or vulnerable, would be less likely to be targeted as they may be seen as less attractive customers.

A better approach could focus on running regular consumer outreach programmes of which one of the targets is consumers on the default or safeguard tariffs.

Remedy 11 – A transitional ‘safeguard regulated tariff’ for disengaged domestic and microbusiness customers

Citizens Advice warmly welcomes the CMA finding that some form of price regulation is needed to protect disengaged consumers from relatively expensive evergreen tariffs. The GB energy market has for too long allowed regressive cross-subsidisation by suppliers that takes away from their poorest customers and gives to their most affluent, even in the face of extensive research highlighting both the high level of disengagement in the market, and this disengagement being both more pronounced and more detrimental among vulnerable consumers.

However, should a tariff-based option prove to be too difficult to implement, we believe there is another way to navigate this issue using an existing scheme, the Warm Home Discount (WHD).

Extending the WHD could provide an easy-to-deliver, popular solution to the issue of energy being unaffordable for the poorest consumers. At present, it is automatically provided to a ‘core group’ of consumers, made up of households in receipt of pension credit guarantee. There is also a broader group of consumers who are potentially able to apply for the discount and their eligibility is contingent on their circumstance, assessed on an ad-hoc basis by suppliers. The nature of the discount creates several difficulties and inequalities in the market:

- Small suppliers are not obliged to offer the discount
- The broader group is not entitled to the discount. Suppliers simply have a pot of money to spend and once this is exhausted they have no obligation to administer
- There is no set criteria for the broader group, energy suppliers are invited to make their own value judgements on who should receive it
- Therefore, application for the benefit is contingent on individual households being aware of it. Evidence from local Citizens Advice shows that many potentially eligible families are unaware of the scheme - a poll by South Staffordshire CAB found that 93% of respondents were unaware they could apply for the broader group.

Some moves were made recently in order to rationalise ‘broader group’ criteria but rather than set this out more certainly, it still gives room for individual suppliers to add ‘bolt-ons’ and include their preferred audiences.

We modelled an updated scheme, extended to the Cold Weather Payments group (see *answer 11d for our rationale*) which assumed that the level of the discount would remain constant for any extension but that the cost of including more households would be borne by all households. **This means that our extended discount would be £135, and would add £5 onto all domestic (including current recipient) bills. The result would see just over an extra 1 million vulnerable households receive the discount.**

Whilst the above solution does not tackle the problem of disengaged consumers paying more for their energy, it does mitigate some of the worst effects of that feature of the market. It could also comfortably sit alongside enhanced information remedies as suggested by the CMA because it would not remove consumer's' incentive to enter the market.

The future of the WHD is uncertain, with 2016 the final year for the benefit under current plans. If the scheme lapses without any successor or augmentation along the lines we have suggested, we would be extremely concerned about the potential negative effects on the recipient group. We would expect energy debts and cases of self-disconnection to increase among those affected, leading to an increase in attendant health risks and exacerbation of existing medical conditions.

a) Should the safeguard tariffs be set on a cost-plus basis, or should they be related to other retail prices?

In order to ensure the smoothest possible implementation for this measure, Citizens Advice favours the tariff being set in relation to other retail prices rather than on a cost-plus basis.

There are several reasons for this. The first is because of the difficulties in establishing the costs to be used under a cost-plus approach. Ofgem's assessment of suppliers costs, and indeed yours during the course of your investigation, have been heavily disputed by suppliers. While there may be an element of gamesmanship in this, to the extent that a regulator's knowledge of costs is imperfect it opens up the risk that the costs used in a cost plus approach would be inaccurate if they are determined by, or adjudicated on, by the regulator. This could result in either consumers paying too much, or suppliers being forced to run at a loss, depending on the direction of the inaccuracy. Neither would be sustainable in the long term. All suppliers will have different costs, further complicating the picture and the risk of locking in profits or losses at different suppliers. Where a supplier cost is incurred in serving both its customers on safeguard tariffs, and those who are not on safeguard tariffs, the need to apportion that cost between them may open up grey areas and the risk of gaming.

The second problem with a cost-plus approach is that it dulls efficiency incentives. By guaranteeing a margin on top of costs, suppliers are able to be profitable regardless of whether are efficient or not in their delivery of services. Further, while we understand the intention would be for the safeguard tariff to be a cap, with flexibility for suppliers to price the safeguard tariff below the cap, we would expect that in practice suppliers would not price below the cap. This is because pricing at the level of the cap would be effectively sanctioned by the regulatory settlement and there is little risk of them losing those customers (they are on the safeguard tariff because they are disengaged).

Finally, it will be intrinsically hard to set a credible margin under a cost-plus approach. If margin is set to a very low level, you may kill competition in the market - there would be no need to switch. But if set at a very high level, you may end up hurting the people you are trying to protect. Trying to find a mid-point that balances the two would be difficult.

So we think it may be more feasible and cause less concern for the regulator to pick reference prices from the actual market place. That way whoever sets the tariff can be certain it is economically feasible for at least some suppliers. If the reference price tracks those of a competitive tariff, it should create strong incentives for suppliers to keep their costs down, while simultaneously ensuring that the disengaged are not forced to pay a substantial premium for their energy.

(b) If the safeguard tariffs were set on a cost-plus basis, which approach(es) we should consider to determining the wholesale energy cost element of the tariffs? What are the relative merits of the proposed approach(es) in the context of the purpose of the safeguard price cap?

Our strong preference would be for the cost to reference tariffs already in the market, precisely for the reason that it would be extremely challenging to pick and agree a methodology for determining the wholesale energy cost of a safeguard tariff. However, should such an exercise need to be carried out, we would favour use of Ofgem's Supply Market Indicator (provided they are able to bring it back online).

(c) Could the imposition of a transitional safeguard price cap result in energy suppliers reducing the quality of service offered to customers on this tariff? Is this risk reduced by customers' ability to choose alternative, unregulated tariffs?

It is difficult to predict how suppliers will react to the introduction of safeguard tariffs. It is clear that there are existing requirements on suppliers to treat all consumers fairly (e.g. treat any expression of dissatisfaction as a complaint, or always take ability to pay into account when agreeing a debt repayment rate) and indeed to explicitly protect certain consumers (e.g. offer certain services and support to a specific group(s) of consumers, like those on the Priority Services Register) regardless of tariff or spend on energy.

Our experience is that some consumers certainly do experience a second class service in numerous ways, including poor customer service - our 'Fair play for prepay' campaign has focused on how suppliers can act to improve this for prepay customers, as the lack of proactive communication and contact has primarily been due to their payment method/meter. More widely, there are certain groups of consumers who are more difficult to reach regardless of meter type: arguably this will continue to be the case for energy suppliers, regardless of the tariff that these customers are on. It is important that consumers on a safeguard tariff are able to choose alternatives should they wish to.

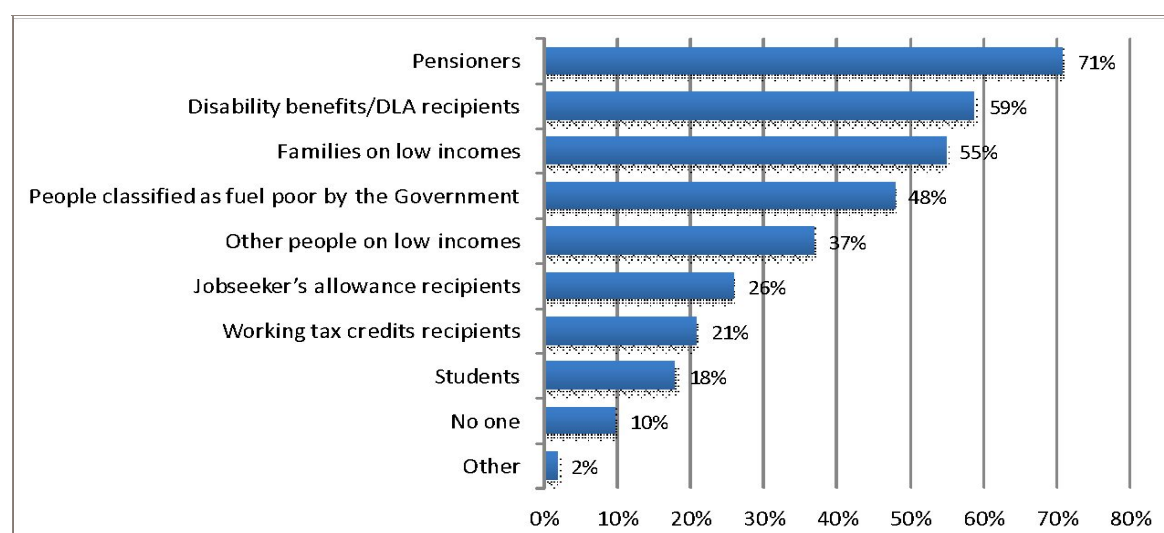
The introduction of smart meters, bundled packages and other smart related products/services will change the market dramatically. It will be important that the regulator requires the industry to demonstrate the steps it is taking to reach out to consumers who are currently disengaged - particularly in relation to initiatives around the safety of supply, energy efficiency measures and support/services for vulnerable consumers.

(d) Should all domestic and microbusiness customers on default tariffs be rolled onto the safeguard tariff, or should this remedy only apply to a subset of these customers?

If this remedy should not apply to all customers, why? And how should energy suppliers identify those customers who should be covered?

Our favoured approach would be for the tariff to benefit those who are a) least able to engage in the market and b) suffer the greatest detriment due to not engaging. Therefore we would favour a subset of those on default tariffs getting a bigger benefit, rather than a large group of consumers (some estimates are that up to 70% of consumers are on evergreen rates) getting a smaller benefit. In this way, the policy can start to address the fundamentally regressive nature of current arrangements whereby those least able to pay are charged the most for essential energy. It also avoids a situation whereby interests are safeguarded for consumers who have simply made a rational decision not to engage in the energy market, rather than those who have vulnerabilities which mean they genuinely struggle to do so. We believe an important distinction needs to be drawn in this instance, recognising where genuine detriment is occurring and tackling it with forensic precision. In this conception, the policy can address not only stickiness in itself but the circumstances where there is the greatest imperative to act.

Given the above, we would not be in favour of the policy being extended to micro-business customers. Further, we would advise it should be administered to consumers on a basis that in some way accounts for their level of income and ability to pay bloated energy prices. Our own polling data indicates that a majority of consumers would be in favour of a 'special cheaper tariff' being made available to pensioners, DLA recipients and families on low incomes (see chart below) -

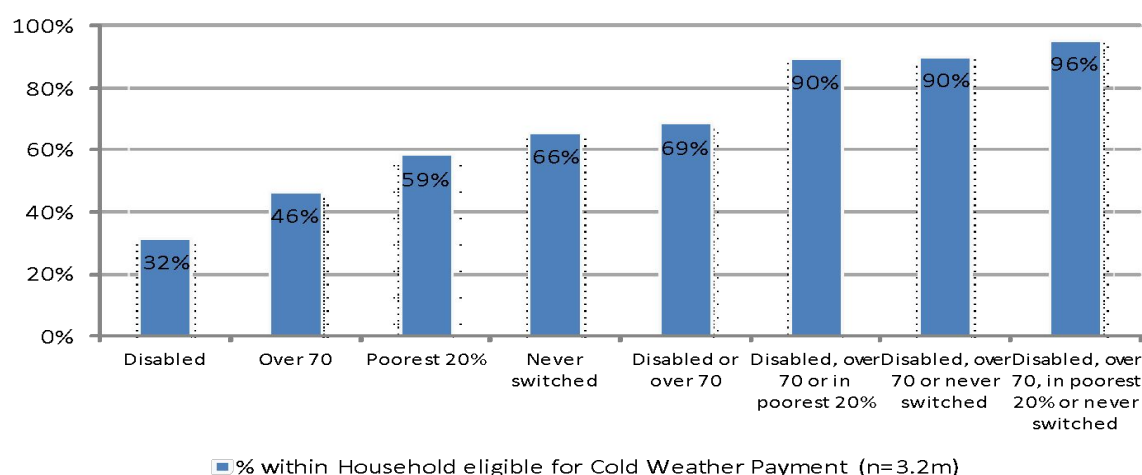


Results of GfK poll question asking who people would favour receiving a special, cheaper tariff⁵²

Due to the overlap of their vulnerabilities, inability to engage in the market and alignment with the groups which the public felt should receive support, we recommend that the Cold Weather Payment (CWP) cohort would be the most appropriate and easy to establish

⁵² Groups of people believed to be most entitled to receive a special cheaper tariff price (Source: Consumer Futures/ Citizen's Advice Omnibus Survey, 2014; multiple answers allowed, hence total exceeds 100%).

beneficiary group. The chart below outlines findings from research by the Centre for Sustainable Energy (CSE)⁵³ which outlines the overlap of vulnerabilities and disengagement of the group. Given 66% of the group has never switched, and that the group as a whole displays in the main vulnerabilities which evoke the sympathy of the public, it represents a compelling case for intervention on a needs basis.



Overlap of vulnerabilities for Cold Weather Payment (CWP) eligible group

(e) How should the headroom be calculated to provide the right level of customer protection while not unnecessarily reducing healthy competition?

Given the previously alluded to opaqueness of supplier costs, Citizens Advice is sceptical as regards the value of 'headroom'. Given the tariff would be designed to target those most disengaged from the market, it would seem logical that any such cap would create a race to the top as there would be no competitive pressure to prevent that outcome. If suppliers are not going to lose customers through the imposition of a cap then there is no reason for them to set it with any other goal than to maximise their margin.

(f) What regulatory information would be required to set the safeguard tariffs?

For a cost plus approach, whoever set the tariff would need data concerning the level and trajectory of policy costs, network charges, actually incurred wholesale costs, accurate estimates for balancing and settlement costs, and a reasonable proxy for the internal costs to serve (for example, in relation to billing, metering and customer service) that would be incurred by an *efficient* supplier. In the case of a market indicator being used, no such information would be required.

(g) How long should the safeguard price caps be kept in place? Is it appropriate to include a specific sunset provision, or should there be a commitment to review the need for and level of the safeguard price caps after a certain period of time?

⁵³ Energy Tariff Options for Consumers in Vulnerable Situations, Centre for Sustainable Energy, May 2015

This question is very difficult to answer without a firm idea of how long it will take for the suggested remedies to have a material impact on switching rates. Information based remedies to improve engagement in the energy market have been tried on numerous occasions over the last 13 years but we are still facing up to a market which a majority are disengaged. For this reason, we would be very reluctant to accede to a specific sunset provision as that would tend to indicate that we expect the market to be fixed within a specific time period. If there were instead a specific date/s set for a review, with clear tests and indicators attached to ascertain whether the tariff could be abolished, then we could confidently say the tariff constituted a robust approach to ensuring disengaged consumers are not hit with unjustifiably high energy bills.

(h) How frequently – if at all – would the level of the cap need to be reassessed? If the cap is set on the basis of directly passing through wholesale and network costs, then it may not be necessary to revisit the safeguard price level.

Research indicates that cost certainty is important to consumers, so this is a prudent starting point for any discussion on the imperative to reassess price. Wholesale prices can be very unstable and it would be unfortunate if the safeguard tariff passed this straight through to consumers, who may struggle to budget as a result. Therefore, our favoured approach would be for a reassessment of cost in a timeframe that sits within current industry practice. Over recent years, suppliers have tended to review prices twice a year, if the safeguard tariff were re-assessed in reference to other market prices on this basis we would view that as sufficient to ensure price sensitivity but without being onerous.

(i) Which energy suppliers should be subject to the safeguard cap, and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?

We believe it should apply to all suppliers, including white labels. The instance of evergreen tariffs being significantly more expensive than fixed deals is most prevalent among large suppliers but is no means restricted to them. If this policy is intended to tackle disengagement and overcharging of inactive customers in a holistic way, partial market application cannot be justified.

This being said, we would not expect the policy to damage or deter new market entrants greatly as most smaller suppliers have the majority of their customers on fixed term tariffs. For this reason, this policy should actually help grow competition in the market by restricting the ability of large suppliers to use inactive consumer prices to cross-subsidise cheap acquisition deals. Taking a largely dormant sector out of play could actually help free up true competition in the rest of the market, at least in the short-term ahead of other measures to improve engagement taking effect.

(j) How should the transition from the current arrangements be managed? We note that an immediate requirement to change the prices for all customers on standard variable tariffs, rollover, evergreen, deemed and out-of-contract tariffs might put pressures on certain suppliers more than others. Should there be, therefore, a period

over which the safeguard price cap is phased in? If so, how long should this period be and how should the transition work?

If the policy is to be limited to domestic suppliers (our preferred design), the customers will be on Standard Variable Tariffs (SVT). We would suggest a maximum six month migration period - setting the rate ahead of time so as to give time for logistics to be accounted for - in keeping with normal industry procedure of changing prices twice a year. Once the policy is in effect, we would favour immediate regulation of existing SVTs to fit in with the new rules.

(k) Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging disengaged customers to switch on to less favourable, unregulated tariffs, and how such risks could be mitigated?

We believe any supplier proposing to do this would be in breach of Ofgem's Standards of Conduct, specifically their duty to treat customers fairly. In addition, we would expect some level of informal control to be in operation due to the intense scrutiny of the sector that has developed in recent years. If gaming of this nature were to be reported by the media and consumer groups, it could be extremely damaging to the reputations and prospects of any suppliers involved.

(l) Should the CMA set the level of the safeguard price caps itself, or should make a recommendation to Ofgem to do so?

Who is best placed to set the cap very much depends on how long it will endure for and how much nuance it requires. As a one-off exercise, the CMA is well-placed, as an actor relatively removed from the energy industry, to make an objective judgement. However, if the level of the cap needs to be adjusted on an ongoing basis, we would suggest Ofgem are best placed to perform such a duty due to their proximity to issues in industry and day to day engagement with related matters. Further, Ofgem has a purview on what initiatives industry is carrying out on an ongoing basis, and how such price shifts may practically fit with other things that are going on.

(m) Are there any potential unintended consequences of setting safeguard price caps, for example, in terms of their potential impact on the level of other, unregulated tariffs?

There is a danger that the cap will simply act to stop suppliers from innovating to keep costs down for themselves and consequently any consumers in receipt of the tariff. Should this situation come about, we would worry for the utility of the cap, particularly if it is set at an initial level which could be seen as favourable from suppliers' perspective.

Recent weeks have seen launches of the market's first social energy providers, with the aim of improving situations for consumers, rather than turning a profit. It could be that models of this nature proliferate naturally and undercut for profit businesses, allowing energy to be seen as more of a social good. Regulating tariffs in the for-profit section of the market could be seen as undermining this concept.

Announcement of such a cap may also risk a temporary 'freeze' on any future cuts to wholesale prices or efficiencies being passed onto consumers by suppliers, as they hedge their bets waiting for the impact of the tariff to become more apparent. We believe that such a short-term trade off is preferable to not tackling the issue at all but it is a potential risk to short-term competitiveness regardless.

Remedy 12a – Requirement to implement Project Nexus in a timely manner

(a) How long should the parties be given to implement Project Nexus?

We would like to see the expeditious implementation of Project Nexus and share your concerns that it needs to be implemented without further delay in order to allow for the benefits of the project to be realised.

Nexus was due to be delivered by 1 October this year but, as you highlight, this deadline will not be met. In April, Ofgem advised the Uniform Network Code's Change Overview Board that 'there appeared to be no plausible scenarios for Nexus as a whole to be delivered this side of Christmas [2015]'.⁵⁴ A replacement timetable had not been published at the time this submission was drafted.

We are reluctant to suggest a precise replacement date as there is an absence of robust public information that would allow us to understand what timetable may be possible. Given that the project is live, the picture of what is, or is not possible, may also alter substantively between now and the publication of your final findings in December.

But we suggest that the presumption should be for implementation as soon as possible unless either the central body delivering the change (Xoserve) or the market participants interacting with those systems can demonstrate that either the costs of doing so, or the risks to consumers of doing so, substantively outweigh the benefits. If the sources of delay are individual rather than systemic - i.e. that one or several market participants are not ready, but the central systems and some or most market participants are ready - consideration should be given as to whether that individual lack of readiness would adversely affect consumer experience (for example, by resulting in a deterioration in their existing quality of service), or simply the competitive positioning of the individual market participant(s) (for example, an inability to benefit from improvements to system capability or a need to operate manual workarounds where automated systems have not yet been developed).

If it is purely the latter, we consider that this is unlikely to constitute a good justification for further delay - while that firm(s) may lose out compared to those of its peers that are ready, this seems like a reasonable outcome in a competitive market. If the former, that consumer experience would be adversely affected, we would find this a more compelling reason for delay.

A general feature of the implementation dates set for industry code related systems change is that they often appear to us to be set based on the pace of the slowest. Typically, particularly on the BSC, market participants will be asked to provide feedback during a modification process on the lead time that they would need to implement a proposed change. Where, as is usual, a range of answers comes back, it appears to us to normally be the case that an implementation date is chosen that all parties can meet (i.e. the pace of the

⁵⁴ Change Overview Board minutes, 15 April 2015. <http://tinyurl.com/obtsomn>

slowest). There may be cases where this is necessary because a failure of all parties to play by the same rules could adversely affect competition or consumer wellbeing. But we consider that it may sometimes have the inadvertent effect of failing to reward the nimble for being nimble. We would like to see both code panels and Ofgem more routinely considering whether there are cases where those market participants that are capable of being ready earlier than their rivals can be moved on to new rules or systems resulting from a modification earlier than their rivals.

(b) Should the CMA implement this remedy directly (eg via an order and/or a licence modification) or should it make a recommendation to Ofgem to implement the remedy?

This would depend on how clear the picture is on what is an achievable timetable at the time you come to make your final determinations in December.

If an achievable timetable is clear, we would strongly suggest that you implement this remedy directly, for three reasons.

Firstly, because referring the matter back to Ofgem for implementation is likely to in and of itself cause further delay. This is because Ofgem is highly likely to wish to conduct its own consultation on a viable date, particularly if there is a perceived risk of legal challenge in relation to the favoured timetable, and/or your finding took the form of a recommendation rather than a direction. This further consultation could cause delays.

Secondly, because an achievable deadline may fall very soon after your inquiry concludes (noting that your inquiry is due to close in December, and that Nexus was due to be implemented two months earlier in October). The industry is likely to benefit from having certainty on the approach to be followed sooner rather than later. Maximising forewarning is likely to reduce total costs and risks.

Thirdly, because the delay to the implementation of Nexus has arisen on Ofgem's watch. That the project is overdue comes as no surprise to anyone in the sector and we consider that more effective oversight, earlier, from Ofgem could have prevented it from arising. Given Ofgem's failure to keep the project on track to date, there is a reasonable case for CMA stepping in here to get things moving rather than simply bouncing the matter back to Ofgem.

We would only support referring the matter back to Ofgem if, at the time CMA came to make its final recommendations in December, there remained such considerable uncertainty on a viable timetable that consumers might be exposed to unreasonable costs or risks if it were prescriptive at that time. But noting that Nexus is due (if not expected) to be delivered before your inquiry concludes, we would hope that such a level of uncertainty would not still exist.

Remedy 12b – Introduction of a new licence condition on gas shippers to make monthly submissions of Annual Quantity updates mandatory

(a) Is it proportionate to require the mandatory monthly updating of AQs? Would it be more proportionate to require less frequent updating of AQs? Would less frequent updating still be effective in terms of removing the scope for gaming of the system?

The AQ gaming argument raised is a familiar one, and one that has persisted in the sector for a number of years. Representatives of our predecessor organisation, Consumer Focus, were approached on several occasions by gas suppliers, including one of the Big 6 in 2013, alleging that the AQ process was either open to abuse, or actively being abused, as a result of other suppliers selectively choosing to only, or preferentially, update values where those updates would be in their favour. It must be noted that no evidence to substantiate allegations of gaming was ever forthcoming (to us), and we are not aware of evidence to suggest that abuse is happening and not simply a theoretical risk. That said, that this issue has arisen as many times as it has in conversation with suppliers over a number of years suggests that this is neither an obscure risk nor an isolated perception. Previous Ofgem reviews of the AQ process have suggested relatively widespread anxiety within the gas sector that the AQ process is open to abuse.⁵⁵

It is not clear to us why concerns with gaming in the current AQ process could not be addressed through some form of audit process or random spot checks designed to provide a credible deterrent to abuse (or means to identify or refute allegations of abuse). Such assurance would come at a cost, but could alleviate concerns. We note that the assurance regime is much stronger in the electricity sector (under the BSC Performance and Assurance Framework) than in the gas sector⁵⁶, and that the costs of running that regime are generally perceived to be outweighed by the improvements in data quality and compliance that it has driven. An equivalent regime for gas may be merited.

Your questions here focus on frequency but appears to be driven by accuracy (i.e. that you propose all AQs should be updated monthly, because then they will be accurate). Given the absence of detailed data in the public domain to substantiate the gaming concern, or to demonstrate how quickly AQs become out of date, it is hard for us to reach a view as to whether monthly resubmission is the optimal periodicity.

But, on face value, it appears reasonable in the context of the likely frequency of meter readings. We understand that all of the major suppliers have policies to (attempt to) physically read meters at least twice a year, and a number attempt to do so more frequently.

⁵⁵ For example, in a May 2014 information request Ofgem noted that 'some shippers remain concerned that the AQ amendment activity of other shippers may adversely impact upon their relative position, resulting in them receiving a greater allocation of unidentified gas.' <http://tinyurl.com/of94vex>

⁵⁶ There have been tentative steps towards improving external audit of gas data in recent years, for example through the introduction of an Allocation of Unidentified Gas Expert, but the scope of independent oversight on gas settlement data is narrower.

Typically around 3 in 10 electricity meters have been read in the last two months - even before the roll-out of smart metering⁵⁷ - which may imply a similar fraction for gas (noting that dual fuel customers are likely to have both of their meters read at the same time). With smart metering, the availability of data will increase markedly. Suppliers will read smart meters at least monthly (more frequent reads may be made where the customer has given their consent).⁵⁸ So suppliers should have at least monthly access to updated consumption data for their consumers with smart meters, and relatively recent data for a sufficiently large tranche of their consumers without smart meters, to make monthly AQ data updates meaningful.

The trade off on determining the frequency of updates is essentially one between settlement accuracy (which is likely to be positively influenced as frequency is increased), the economic incentive for demand reduction (which is likely to be positively influenced as frequency is increased⁵⁹) and the cost of compliance (which is likely to be negatively influenced as frequency is increased). The 'sweet spot' where the tension between the three is optimally balanced is something that the CMA would need to resolve but we would caution against taking an excessively pessimistic view of compliance costs. The whole business case for smart metering is based on more, better, quicker, data - allowing consumers a (near to) real time understanding of their use and the ability to be rewarded for shifting demand. Suppliers themselves are likely to be retrieving and processing consumers' meter data far more frequently than monthly. Data processing, storage and communication costs in all sectors have decreased materially over time. If you receive arguments from suppliers for a much reduced frequency we would expect you to robustly challenge these arguments as they are intuitively unpersuasive.

⁵⁷ According to a March 2011 paper by the electricity balancing and settlement company, Elexon, 29% of non half hourly metering points were settled on actual data by the R1 settlement run (at that time). R1 takes place 36-40 working days - around 7 to 8 calendar weeks - after the relevant Settlement Date. <http://tinyurl.com/pw2fsj8>

⁵⁸ See Condition 47, 'Smart Metering: matters relating to obtaining and using consumption data' of 'Electricity suppliers licence: standard conditions. Consolidated to 8 July 2015,' Ofgem. <http://tinyurl.com/ncg6rz4>

⁵⁹ Because the supplier will be credited with this demand reduction more quickly - and will therefore be able to build a more attractive product that can share this benefit with their customers.

Remedy 13 - Requirement that domestic and SME electricity suppliers and relevant network firms agree a binding plan for the introduction of a cost-effective option to use half-hourly consumption data in the settlement of domestic electricity meters

(a) Would this remedy be effective in stimulating tariff innovation, in particular in terms of time-of-use tariffs?

Probably, though it may only be effective in stimulating tariff innovation around time of use. We see less reason to think it would affect other forms of tariff innovation.

At the moment, every domestic consumer is attributed to one of two consumption profiles. Profile Class 1 is used for consumers with single rate metering, while Profile Class 2 is used for those with Economy 7 metering⁶⁰. It should be noted that Economy 7 is not the only form of time of use tariff available in the market, alternatives like Economy 10 exist that reward consumption in entirely different time periods⁶¹. That time of use tariffs other than Economy 7 are on the market despite the absence of a profile class to reflect the consumption pattern they seek to reward/reflect suggests that the use of profiles in settlement is not the only relevant commercial factor affecting the presence or absence of time-of-use tariffs, and that other factors such as differential exposure to network charges and legacy metering are also relevant. Economy 10 does not appear to be widely promoted and many suppliers do not offer an E10 tariff, which may suggest they are a legacy product driven by obsolete metering rather than something suppliers would wish to actively offer under existing market rules.

In principle, time of use tariffs could be encouraged for domestic consumers without the need to settle based on half hourly data if a wider range of profile classes were introduced to reflect this. For example, if a supplier wanted to offer cheaper energy at evenings and weekends, a pattern of savings that consumers might find familiar from fixed line telephony, a profile could be shaped to match this. This could be an alternative to settling based on actual half hourly consumption data if the costs of doing so were prohibitive.

However, an approach of introducing a large number of new domestic profile classes would have major drawbacks. There may be costs associated with maintaining and introducing a large number of profile classes. In itself, the need to fit products to these profile classes could distort what tariffs are offered. While it may be more accurate than the current system of only applying two profiles to the entire (household) population it would still result in consumers being settled on an estimated usage profile, rather than an actual usage profile. To the extent that this deviates from their actual usage profile it may over or under reward any shift in their demand.

On balance, given the lack of time of use signals in the current system of profiling and the weaknesses with expanding the number of profiles as a solution to this, we consider that if

⁶⁰ 'Load profiles and their use in electricity settlement,' Elexon. <http://tinyurl.com/osdqp2b>

⁶¹ Our 2012 study, 'From devotees to the disengaged,' found 66% of Time of Use consumers on Economy 7, 10% on Economy 10 and the remaining 24% on a mixture of protected multi-rate tariffs and Dynamic Teleswitching tariffs. <http://tinyurl.com/c3r57fg>

actual domestic consumption data is available then it should be used in settlement provided the costs of so doing are not prohibitive. Further, noting that the industry has for many years had it in its power to introduce a timetable for taking this step (i.e. through raising modifications to the industry codes to achieve this aim) but has not done so, we think that assuming that if left to its own devices the industry will expeditiously bring forward a voluntarily plan is unrealistic. This suggests that the mandation of a binding plan or roadmap to get there may be necessary to see these changes made.

(b) How long should the parties be given to agree this plan?

While implementing a plan may be time consuming, noting the often painfully slow progress of industry code changes, we think that creating it should be much quicker. We think it would be realistic and reasonable to require the creation of this plan within six months of the end of the CMA's inquiry (i.e. no later than the end of June 2016).

(c) What are the principal barriers to the introduction of a cost-effective option to use half-hourly consumption data in electricity settlement for profile classes 1 to 4? How could these be reduced?

We are not in position to identify these barriers, although clearly the P272 experience highlights how difficult it is to progress a reform like this through the current code governance framework. We expand on this point in response to the questions you have outlined for remedies 18a, b and c.

(d) Should the use of half-hourly consumption data in settlement for these profile classes (or certain of them) be optional for energy suppliers, or should it be mandatory? What are the advantages/ disadvantages of each approach?

It should be borne in mind that it is unlikely that 100% roll-out of smart metering will be achieved. Consumers will have the right to refuse smart meters, and experience to date additionally suggests that there may be many problematic installations where failed meter readings continue to occur and some geographic areas and building types which will be prohibitively costly to provide smart metering services in the short to medium term. In view of this, it is important that settlement continues to provide a route for non-smart settlement as well as smart settlement - recognising that half hourly data may not be available for every site. This does not mean that improvements in settlement accuracy are not possible for those sites, because better profiling may still be possible.

Where half hourly data is available, we think that its submission should be mandatory rather than optional. The risk of the optional route is that a situation rather akin to that alleged to be occurring for AQs (see remedy 12b) could arise whereby suppliers could choose to use half hourly data where it is in their favour but the non half hourly profile where it is not. Gaming opportunities need to be minimised.

While smart meters will store half hourly meter readings, it is highly unlikely that suppliers will try to retrieve data from the meter every half hour due to the communication and processing

costs of such an approach. There are further data communication and processing costs associated with onward submission of these meter reads into the settlement systems. Any solution put forward for when the half hourly meter data must be submitted into settlement (subject to consumer consent) will need to find a balance between the timeliness of submitting data into settlement and the cost of doing so. It would be appropriate for this to include a reconsideration of the current timing of settlement runs and the proportion of power that needs to be settled on actual meter reads at each stage. In a world where most, though not all, consumers have smart meters it may be possible to make settlement firm more quickly than the current 14 months. It may also be possible to reduce the window before the first settlement run - which could help to reduce the collateral requirements that are in place, reducing a barrier to entry and participation.

(e) Are there any distributional considerations that we should take into account in relation to time-of-use tariffs? For example, might vulnerable customers end up paying more if they fail to change their consumption patterns? Or will the decline in the required generation capacity outweigh any increase in peak prices?

In our report *Take a Walk on the Demand Side*, Citizens Advice found that there are substantial distributional considerations to bear in mind when considering the proliferation of time-of-use tariffs.⁶² Even assuming that a more flexible and responsive demand side could lead to lower system costs overall, the question is whether the costs saved by this efficiency gain would be 'used up' on incentives for active load-shifting participants - probably initially a small group of engaged early adopters - or whether enough efficiency would be gained from the actions of this group to provide lower bills for all.

We assume that time-of-use tariffs would be voluntary for domestic consumers. Even so, many could lose out. One recent trial found that while the majority of consumers (having self-selected to take part) saved money, 40% paid more on a time of use tariff than they would have done otherwise, in some cases by several hundred pounds over the course of the trial.⁶³

This is reinforced by recent experience of existing time-of-use tariffs with Economy 7. Past research by Consumer Focus⁶⁴ suggested that a surprisingly large proportion of people on these tariffs could actually be paying more, not less. Its 2012 study suggested that 38% of time-of-use customers did not have storage heating and/or did not use regularly use appliances at off peak times and were unlikely to be benefitting from being on a time-of-use tariff. One of the biggest concerns reported by consumers was confusion over off peak times and rates. 59% thought that additional information and advice would help them make better use of their tariff and heating system. We also called for greater standardisation of time-of-use tariffs to aid consumers in price comparison as we found extremely wide variance in the proportion of consumption that would need to be off peak before a consumer benefitted under different time-of-use tariffs.

⁶² 'Take a walk on the demand side,' Citizens Advice, August 2014. <http://tinyurl.com/ne97ddz>

⁶³ Page 4, 'Insight Report: Domestic time-of-use tariffs', Customer-Led Network Revolution, 2015. <http://tinyurl.com/p5uz838>

⁶⁴ 'From devotees to the disengaged,' Consumer Focus, October 2012. <http://tinyurl.com/c3r57fq>

These risks remain in place as we move into a smart meter world: that some consumers may find themselves on time-of-use tariffs even though they might be better off on a single rate tariff, and that price comparison may be difficult in the presence of tariff proliferation. It is possible that if tariffs become more complex, with a wider range of time of tariffs available (in terms of design, not simply number) that accurate price comparison may become more difficult and/or that consumer understanding of what are or are not off peak times may be blurred. When comparing between flat-rate tariffs, consumers have to consider unit rate, standing charge and duration of offer. If the market also included time-of-use tariffs, added to this list would be not only multiple different unit rates and different time bands, but also a consideration of their own energy behaviour and willingness to be flexible.

Our 2012 study suggested that around half of time-of-use tariff users deliberately ran appliances off peak to save money. This suggests that an incentive effect will exist for some users, and that this could be used to shave peak demand. If peaks are materially reduced, this could reduce the total generation (and network) capacity required, resulting in a lower overall cost to consumers. But it also suggests that a significant tranche of consumers on time of use tariffs may be relatively passive and that their behaviour is not influenced by a within day price signal.

In the current system, where most consumers are on single rate tariffs, consumers with mostly on-peak demand are effectively cross-subsidised by those with mostly off-peak demand. This will be to the benefit of some, and the detriment of others. It is quite likely that there will be vulnerable customers in both pots - some winning, some losing, from the cross subsidy. Consumers' individual circumstances will affect their ability to shift usage. Medical care demands, mobility constraints (such as being housebound), or work patterns may mean that some households cannot shift demand. In addition, consumers that have always been on single rate metering may not have a strong understanding of their consumption pattern - because they have never received information on this.

There is good reason to believe that the main beneficiaries of time-of-use tariffs would be more affluent and engaged consumers, while vulnerable consumers may lose out. For example, the experience from US trials has been that low-income consumers are less able to vary their energy usage in response to price signals,⁶⁵ and a recent large-scale UK trial has found a strong correlation between affluence and responsiveness to some types of price signal (though not others). In future, flexibility in energy usage may be greatly increased by ownership of new technology such as electric vehicles or automated smart appliances, but this technology will be expensive, posing a further barrier to participation in time-of-use tariffs by low-income consumers.

These factors in combination suggest that considerable care should be taken on how - and indeed if - consumers transfer to time-of-use tariffs. In some cases, they will be inappropriate to their needs and they may be better off remaining on a single rate tariff. We do not think that suppliers should be allowed to sell time of use tariffs during the installation

⁶⁵ See 'Time-Varying and Dynamic Rate Design', RAP/The Brattle Group, 2012. <http://tinyurl.com/okscsf2>

Figure 5 on p.30 shows that in 7 out of the 10 trials reviewed, response from low-income consumers was lower than average, and it was no more than average in the other 3 trials.

of a smart meter in a consumer's home as they are unlikely to be able to make an informed decision at that time. More generally, it will be important to ensure that consumers have access to appropriate information about their own consumption, and that tariffs are intelligible and well communicated, to mitigate the risk of mis-selling that could become greater as tariffs become more complicated. Other measures such as 'shadow bills' that show what you would have paid on a flat-rate tariff or trial periods for time-of-use tariffs might make these a more reliable proposition, but fundamentally they will always be more complex and riskier.

Half-hourly settlement will not mean that all consumers are automatically transferred to time-of-use tariffs. Indeed we expect to see these remain relatively uncommon for the foreseeable future. However, even if consumers do not switch tariff, half-hourly settlement could have an important distributional impact. Consumers who already tend to use energy off-peak or who can be flexible will have an incentive to move to time-of-use payment and receive lower bills, and this will have a seesaw effect on the rest whether they change tariff or not. In particular, if a consumer mostly uses energy at expensive peak times, their supplier would then have an incentive to either get that consumer onto a time-of-use tariff or off their books altogether. This could lead to a situation of flexibility/peak-avoidance 'haves and have-nots', with higher bills and second-class service for the latter.

(f) When should the (optional/mandatory) use of half-hourly consumption data replace settlement based on assumed customer profiles? Is it necessary to wait until 2020 when all domestic customers have smart meters installed? Alternatively, could the use of half-hourly consumption data be phased in for those customers with smart meters prior to 2020?

It would be appropriate to phase in the use of data prior to 2020. This would allow the benefits of smart metering to be realised earlier. It may also allow any data quality issues that may arise to be managed more efficiently than would be possible with a 'big bang' approach. It should be noted that any data collection would have to be made in-line with what a consumer has opted to share or else based on fully anonymised usage data.

Remedy 14 – Remedy to improve the current regulatory framework for financial reporting

(a) Should the scope of the individual areas reported on align with the scope of the markets as set out for generation and retail supply in our provisional findings? For example, should a requirement to report wholesale energy costs on the basis of standard products traded on the open wholesale markets be imposed?

You appear to have identified a major deficiency in the way profitability information is reported to Ofgem, the information being organised along the internal divisional lines of each company rather than according to the way notional stand-alone generators and retailers would transact in the marketplace and we support the remedy you have proposed to resolve it. What is not clear to us is what the effect of this change in methodology is for the overall profitability picture, and more specifically, whether the companies' transfer pricing policies would be considered 'fit for purpose and transparent' (as BDO concluded) if this notional market actor test was used rather than the legal entity approach advocated by the OECD?

(b) What regulatory reporting principles would be particularly relevant to the preparation of regulatory financial information in this sector?

No comment at this stage.

(c) Would summary profit and loss account and balance sheet information for each area be sufficient to enable the effective regulation of the sector and the development of appropriate policies? Or should the large domestic and SME energy suppliers be required to collect and submit additional, more granular financial information?

We believe large domestic and SME suppliers should continue to be required to report financial information on a reasonably granular basis, to allow for example, consumers to understand the various costs that underpin their energy bills - foremost here being the extent to which the costs of environmental and social policy, as well as pass-through network costs, contribute to the overall bill. Any reduction in the granularity of the financial information that is reported could obscure these costs and lead to a less informed public debate. We expand on this point in response to question (h) below.

(d) Should Ofgem require that the summary profit and loss and balance sheet information be audited in accordance with the regulatory reporting framework?

Yes. The low level of trust that consumers have in energy companies means that the financial information that the companies report should be independently validated if it is to be accepted as an accurate reflection of their profitability. We note that this is consistent with a the trend towards more extensive external verification: Ofgem recently introduced a

requirement on the large suppliers to have their CSS audited in response to a call from stakeholders to do so.⁶⁶

(e) Should this remedy apply to the firms that are currently under an obligation to provide Ofgem with Consolidated Segmental Statements? Or should it apply to a larger or narrower set of firms?

We do not see a need to change the coverage of the CSS obligation. The debate about profitability and energy prices is closely linked to questions about the extent to which the large companies use incumbency and vertical integration to their advantage and we do not see any new evidence to suggest that the obligation should be extended to the smaller end of the market.

(f) What would be the costs of imposing such a remedy? We note that some firms' reporting systems are not currently capable of providing information on such a 'market-orientated' basis and that our remedy could require significant additional system requirements.

No comment at this stage.

(g) Should the CMA implement this remedy by way of licence modifications or by way of a recommendation to Ofgem?

No comment at this stage.

(h) To what extent should this financial information on performance be published?

We think there should be a presumption towards full disclosure. This inquiry was prompted in large part by a breakdown in public trust in the energy sector and a lack of public confidence that the prices they pay are fair. Resolving this must at least in part involve the better communication of what margins are and where the money goes. This is hardly going to be helped if Ofgem is collecting information that could allow it to make this case but that is invisible to the outside world. It may be that if there are genuine concerns around the commercial confidentiality of specific items that these can be overcome by the anonymisation and aggregation of data before publishing - though this should be by exception rather than by default.

As a de minimis, we think at least the same level of detail as is currently provided by the Consolidated Segmental Statements ('CSS') should be published. Anything less, and the transparency of the sector would be going backwards, not forwards. Noting your other evidence, which is reinforced by reports from other analysts⁶⁷, that a major driver of bills in the last few years has been the implementation of social and environmental policies we

⁶⁶ 'Rebuilding consumer confidence: actions to improve the transparency of energy company profits,' Ofgem, 10 October 2014. <http://tinyurl.com/oa6hcg9>

⁶⁷ See, for example, 'The customer is always right: putting consumers back at the heart of UK energy policy,' Policy Exchange, 16 July 2015. <http://tinyurl.com/p9zg6cb>

would like to see inclusion of sufficient detail to allow the reader to understand their respective costs - this has not been delivered under the CSS, but would be valuable.

Insofar as we can understand what you are seeking to achieve here - and that understanding is limited, as the explanation you provide is limited - you appear to be looking at an ex post reporting arrangement produced at some point after the end of a financial or defined regulatory reporting period showing the relevant firm's historic performance. This may be of value - the CSS have been of some use to stakeholders - but is unlikely to represent a complete solution in the area of financial reporting.

Remedies like the CSS show a picture of the past, and while the data can be informative in terms of identifying long run cost drivers it is often already starting to become dated at the time of publication. This means that it is of little use when trying to understand the drivers behind a contemporaneous price rise or cut. Because those price movements are of great interest to consumers there is also a need for a current and forward looking projection of costs such as has been provided by Ofgem's Supply Market Indicators (SMI). The SMI has helped to provide insight on the direction of travel of energy bills and to incentivise suppliers to try and better justify explanations of their pricing decisions. On 22 May, Ofgem announced that 'this summer we will announce a new range of wholesale and retail market indicators which we will be publishing on a regular basis. As part of this review, we are suspending the SMI indicator and will provide an update in the summer.'⁶⁸ At the time of this submission, that update had not yet been published. We would be concerned if the SMI's suspension were to become protracted, or if any replacement product were to be less detailed or frequent than what it is replacing.

There are two areas of interaction with other proposed remedies.

The first is with Remedy 11 - A transitional 'safeguard regulated tariff' for disengaged domestic and micro-business customers. One of the options on the table in that area is a cost plus approach, with a price cap set by either Ofgem or the CMA. If you were to proceed with such an approach, it would be necessary to ensure that the relevant regulator had access to relatively close to real-time financial performance data. This may necessitate monthly reporting, certainly no less than quarterly. Anything less frequent than this and you would run the risk of a price cap lagging the actual costs of suppliers to an extent that it becomes unrealistic and locked in at an unreasonably high, or low, level for too long.

The second is with Remedy 15 - More effective assessment of trade-offs between policy objectives and communication of impact of policies on prices and bills. If a new independent body (or an existing body, through the expansion of its role) is to be tasked with becoming a trusted source of information and analysis on the factors driving bills then it will be very important that it has access to the financial information collected under this remedy. Without it, its analysis may be less rich or it may be forced to separately collect the same or similar data from suppliers (which would be inefficient). So, appropriate data sharing agreements should be put in place - any licence change required to put in place this remedy should facilitate data sharing with that designated body.

⁶⁸ 'Ofgem announces review of markets data,' 22 May 2015. <http://tinyurl.com/nld68ag>

Remedy 15 – More effective assessment of trade-offs between policy objectives and communication of impact of policies on prices and bills

(a) Are such assessments of the impacts of policies on prices, bills and on the trilemma trade-offs carried out to a sufficient extent currently? Are there specific areas where such assessments are not currently carried out, or might be undertaken more comprehensively?

During the last parliament, DECC began producing, on a roughly annual basis, departmental Estimates of Impacts of Policy on Bills. These documents have been a valuable resource in subjecting the department to scrutiny that would otherwise be much more difficult. The estimates are of limited use, though, because they are predictions of the future that are hugely contingent on the assumptions and forecasts that go into them, and the scope for errors in both assumptions and forecasts is very large. To give an example of this, in its Annual Energy Statement 2014, published in November 2014, DECC estimated expenditure under the LCF in 2020/21 would be £6.25bn, while only eight months later, in the OBR's 'Economic and Fiscal Outlook - July 2015,' it was estimated at £9.1bn (both in 2011/12 prices).

A model is only as good as its input data and underlying assumptions allow it to be and the department is heavily reliant on inherently unreliable forecasting. Unless those underlying assumptions, as well as the central case estimate, are exposed to sufficient scrutiny, policy development will be weakened. Policies that are adaptable to a range of possible futures should generally be preferred to those which might look very attractive in one possible state of the world, even the most likely one, but very unattractive in other eventualities. We would like to see the value (and likelihood, or not) of a policy being future-proof drawn out better in impact assessments. This should include the identification of those variables a policy is most dependent on and more detailed stress testing of likely outcomes if those variables differ from the central scenario. There may be value in extending the role of the independent Panel of Technical Experts set up under the Electricity Market Reform package, or creating a similar panel with a broader remit, to provide educated technical challenge to the impact assessments that DECC creates. This could mitigate some risks of optimism bias that may exist where a department is assessing its own policies. It would also be useful if the spreadsheets underlying modelled figures were published alongside the assessments based on them. That could help stakeholder ability to understand and validate/refute modelling, and also allow them to more easily run their own scenarios.

It should be stressed that the absence of such tools does not simply adversely affect consumer understanding of bill drivers, it also adversely affects the longevity and credibility of policies too - and the cost of capital that consumers need to pay. Since the recent announcement that the LCF has been bust we have seen the government moving to cancel and curtail schemes to try and bring itself back within budget. This could create boom/bust cycles, undermining investor confidence and adversely affecting future delivery costs.

While DECC publishes an approximately annual model projecting future policy costs, there is value in other reporting of relatively near to real time policy costs. This is because they are often a disputed area of costs at the time of retail price rise announcements. In recent years, suppliers have been quick to blame government policies but it has not been easy to validate claims in this area. In that regard, Ofgem's currently suspended Supply Market Indicators ('SMI') have been useful in drawing together a range of data sources to give indicative current policy cost information. We would like to see it continue to publish this information when the SMI are reinstated.

The publication of actual, close to real time, delivery costs would be a useful tool to understand the extent to which actual costs are coinciding or deviating from those assumed during impact assessment. We have seen some good practice from DECC here, for example in the regular publication of anonymised supplier ECO costs. Broadening such practices to include other policies would be welcome. Given the scope for costs to escalate rapidly - such as the projected LCF spend inflating by £2.85bn/year in two estimates only 8 months apart - there may be value in DECC providing an aggregated set of policy costs on a monthly or quarterly basis rather than (approximately) annually as at present. This should clearly set out where costs are known, and where they are merely estimated. The basis of estimates should be made clear.

A broader issue around communicating policy costs is the lack of a trusted party to explain what they are. In practice, there are already many parties trying to communicate policy costs to the public, including (and not limited to): DECC, Ofgem, consumer groups, suppliers, generators, both pro and anti green groups, both pro and anti fracking groups, trade lobbyists and assorted think-tanks from across the political spectrum. Many of these groups have their own vested interest and claims and projections are often mutually incompatible, sometimes wildly so. The barrage of conflicting messages consumers receive may impede public understanding and undermine trust in the sector. We can therefore see some attractions in trying to find an 'independent referee' who can communicate these issues to the public, as has been advocated by some stakeholders. We doubt this would be a painless solution: the presence of an independent referee does not by necessity preclude argument over figures - the CMA itself is an independent referee, and you will be aware that people dispute your figures - and it would need take time and considerable effort to build the presence to be recognised, trusted by, and inform the public. But it may be worth trying to develop this body despite those difficulties because the continuation of the status quo - seemingly relentless public dispute on policy costs - is untenable.

A large proportion of the industry rules, and by implication a major driver of the costs and benefits that consumers face, are set out in the various industry codes. Except where Ofgem conducts a formal impact assessment after the final modification report is issued to it for decision - and it only does so in a minority of cases - the processes by which these codes are modified does not include any assessment of their consumer impact; this is not included in within-code processes. This is likely to result in an only partial assessment of the impacts of proposals being developed in most cases. It may also discourage consumer groups and other third party stakeholders from engagement in code processes due to their lack of

accessibility and/or relevance. We discuss this issue further in our comments on Remedy 18b.

(b) Are the assessments sufficiently scrutinised?

(c) Are the assessments sufficiently disseminated to interested parties? Which parties need to be informed about these assessments?

Existing impact assessments and, particularly, the Estimated Impact of Policy on Bills document are published by the DECC in the same way as other policy documents. Because it is written in a relatively accessible manner, and covers what is clearly a topic with a lot of media interest, it does receive a relatively large amount of coverage (at least in comparison with ordinary civil service documents). However, the timing of the two processes mean that the impact of policies in aggregate is given strong consideration only after they have been enacted, whereas prior to decision impact assessments focus much more narrowly on the specific impacts of the policy under consideration. This leaves a gap, where the cumulative impact of multiple policies is only weakly considered until after key decisions have been made. In effect, while DECC may consider the trade-offs within a policy, it does not consider trade-offs between policies - which may dilute the incentives on it to prioritise the most effective policies.

The process also lacks a formal challenge process on the cumulative impacts of energy policy. There are two potential routes this could take. One would be for a regular hearing by the Public Accounts committee when new projections are published. This would ensure that charges levied on consumer bills are treated with the same degree of gravity as other taxation decisions, and that DECC is achieving value-for-money from its spending. The second alternative would be to formalise a challenge group for DECC, with similar expertise and, just as important, independent-mindedness as the Panel of Technical Experts set up to challenge assumptions in the capacity market.

Either of these options would require DECC to willingly open itself up to further criticism, and would oblige it to present a more thought-through assessment of the costs, trade-offs, uncertainties and compromises that are resulting in a policy recommendation.

More broadly, as the NAO has highlighted, 'Government and regulators do not know the overall impact of planned infrastructure on future consumer utility bills, or whether households, especially those on low incomes, will be able to afford to pay them. It seems critical to know "how much is too much", based on reliable information.'⁶⁹ There is no clear mechanism to allow government departments to understand whether peaks and troughs in investment in their sector, or demographic groups that may win or lose as a result of their policies, map on to peaks and troughs, or winners or losers, in other sectors. We would like to see the OBR taking on a role in mapping the cumulative effect of infrastructure investment across utility sectors on consumer bills. This would be informed by, but would also feed into, DECC analysis and should help to improve the quality and targeting of policy.

⁶⁹ 'Infrastructure investment: the impact on consumer bills,' National Audit Office, 13 November 2013. <http://tinyurl.com/oqnyoeh>

(d) Is there an additional role for either Ofgem and/or DECC in carrying out assessments of the impacts of policies and trilemma trade-offs, or communicating the results of them?

Not all energy policy is driven by improving the country's position within the trilemma. Where it is, such effects are usually captured during impact assessment. But some decisions, like the recent decision to block onshore wind from receiving RO or CfD support, and to impede its ability to get planning permission does not appear motivated by (or likely to deliver) improvement in security of supply, affordability and/or decarbonisation. Rather, the motivation for the policy seems to be an aesthetic one: protecting views and landscapes. This may or may not be the right thing to do as a matter of public policy. But it is clear that an assessment solely with regard to the trilemma would miss the reason why this change is being put forward. As stated in response to Remedy 2b, it would be useful if these other considerations (jobs, industrial policy, protecting the countryside, etc) were clearly identified and valued in addition to the trilemma objectives.

(e) Should further, authoritative analysis be published to assist the public discussion? What form might this take? Which existing bodies are best positioned to undertake this role?

(f) Is there a sufficient case to justify creating a new, independent body tasked with scrutinising the impact assessments of policymaking bodies and/or providing authoritative analysis to inform the public debate?

An example of an approach which has performed well, albeit with limited powers, is the Panel of Technical Experts in the capacity market process. Their reports have identified major issues within the relatively narrow scope of the National Grid Capacity Assessment report, and they have also been refreshingly unafraid to raise wider issues with the policy. Even in that example, though, they operate under considerable constraints of time, exposure and influence. It would be useful, with regard to the capacity market, to have an increased formal role for the PTE, including perhaps an annual appointment with the Energy and Climate Change committee in parliament. More widely, it would be helpful to institute either an equivalent body with scope to challenge decisions in other parts of the electricity market reform settlement, or to expand the role of the capacity market experts to include the wider CfD market and interactions between the two.

Remedy 16 — Revision of Ofgem's statutory objectives and duties in order to increase its ability to promote effective competition

(a) What specific changes should be made to Ofgem's statutory objectives and duties in order to ensure that it is able to promote effective competition in the energy sector?

Our reading of your findings is that the specific change you have in mind is the reversal/removal of provisions introduced in the Energy Act 2010 that, in your view - or at least in the way in which it has been portrayed to you by Ofgem - constrains the regulator's ability to promote competition. As you put it:

'In commenting on its objectives and duties, Ofgem had in particular noted how its competition duty had been progressively downrated relative to other duties over the last ten years, in particular with the addition of new duties and the qualification introduced in the Energy Act 2010 (EA10) that required it to look at any other action it could take before deciding on a competition route. Ofgem highlighted the need, if we suggested it should change its policies towards improving competition, for our conclusions and remedies to be reconciled with the structure of its duties.'

We think this is an untenable argument. Both because it is not supported by the legislation, and because the introduction of the Energy Act 2010 requirements either came into force after regulatory decisions that you are concerned with, or is not a clearly relevant factor in subsequent decisions that appear to concern you.

The Energy Act 2010 does not require Ofgem to prioritise non-competition remedies over competition remedies. It simply obliges Ofgem to consider whether they exist before making a decision. If it does so, and reaches the view that a competitive remedy is the best way of solving an issue, it is not precluded or frustrated from taking that option.

The Energy Act 2010 received Royal Assent on 8 April 2010. It cannot be a factor in any perceived poor regulatory decisions made before that date, which includes many of your areas of concern like the repeated failure to introduce locational transmission losses, the enduring dysfunctionality of the industry codes and SLC25A. For decisions made after that date, it may be relevant - in theory. But in the areas where you have identified potential deficiencies in subsequent regulatory decisions you have not demonstrated why it may have contributed to consumer harm in practice. Indeed, you have not set out any clear evidence that it has meaningfully affected subsequent decisions at all, for good or ill.

To take the case of RMR, where you have anxieties about the restrictions on tariffs impeding competition, it must be noted that Ofgem considered that its final RMR proposals were 'a package of simpler, clearer, fairer measures to improve radically the *competitiveness* of the household energy market.'⁷⁰ It may have been wrong in its judgement that RMR was pro-competition. But it was trying to improve competition, rather than find an alternative to it.

⁷⁰ Emphasis added. 'Frequently asked questions on the retail market review,' Ofgem, October 2012. <http://tinyurl.com/o44wzql>

We do not consider that you have made a persuasive case for seeking to altering Ofgem's statutory duties. If you wish to progress this remedy you need to find some meaningful evidence to substantiate the case that it would improve consumer outcomes.

(i) For example, would it be possible to revert to the role of competition that existed before the introduction of the Energy Act 2010?

Of course - it is always possible to reverse existing UK legislation through new UK legislation (provided it complies with relevant international treaties and EU Directives). This does not mean it is a good idea. We are sceptical that any changes are required here, for the reasons given above.

Remedy 17 – Introduction of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making can be addressed transparently

(a) In which circumstance should Ofgem have the right or duty to express views on DECC's policies and DECC/Ofgem strategy for their implementation? What format should such views take? Should DECC have a duty to formally respond?

We are not in agreement with the CMA on the need to introduce a new formalised mechanism for DECC and Ofgem to resolve disagreements.

In practice, we would always expect a sector regulator, and the ministry responsible for that sector, to share some fuzzy boundaries and to have some views on the activities and policies of each other. We do not think that any mechanism will make this wholly avoidable, a view you seem to share.⁷¹

As a stakeholder, we are aware of periodic points of friction between Ofgem and DECC. A number of these cropped up around the turn of the decade. These included in relation to the long term design of the UK's energy system⁷² and in relation to transmission connections.⁷³ The policy design of the roll-out of smart metering was also 'repatriated' from Ofgem to DECC around that time.

The 2010/11 review of Ofgem sought to provide a formal mechanism to resolve this tension:

'Our review [...] recommended that the regulatory framework should be strengthened by introducing a new Strategy and Policy Statement and associated duties to increase regulatory certainty. This will provide Ofgem regulation with a clear direction of the Government's strategic energy priorities and the policy outcomes we want to achieve to inform its regulatory decisions.'

The Energy Act 2013 provided powers for the Secretary of State to designate such a Strategy and Policy Statement [...] [it] should be taken into account in Ofgem's regulatory decision making, forward work plans and annual reports and help it play its full part in improving competition, helping consumers take control of their energy bills and costs, securing investment in energy infrastructure, and tackling climate change.

A strategy and policy statement is designed to provide context and guidance about the priorities and desired outcomes of Government to the regulator. It is Government's opportunity to define a strategic vision of the likely needs and priorities over the long term

⁷¹ You note that "It would not be realistic for DECC to refrain from exercising its discretion over elements of policy and we note that it is always possible that DECC and Ofgem will disagree on a particular area of policy."

⁷² The Electricity Market Reform package passed in the Energy Act 2014 was prompted in large part by Ofgem's 2009/10 'Project Discovery' study. Former Energy Minister Charles Hendry was quoted in the trade press as having 'praised the thoroughness of Ofgem's "Project Discovery" assessment, but said that policy work should be done by the Department for Energy and Climate Change' <http://tinyurl.com/n9px7q7>

⁷³ The 'Connect and manage' regime introduced by DECC in 2010 was widely perceived as being an area where DECC had taken over policy ownership in frustration at the perceived slow progress that Ofgem had made in resolving the 'GB Queue' (of generation projects facing a long wait for a new connection) problem.

*and to provide a policy context for regulatory decisions in the medium and short term. A strategy and policy statement is Government's opportunity to reaffirm the fitness for purpose of the regulators' responsibilities and clarify the respective roles and responsibilities of regulator and Government.*⁷⁴

The Coalition Government consulted on the content of this Strategy and Policy Statement ('SPS') in autumn 2014, though we cannot find evidence that one was formally put in place before parliament dissolved for the May 2015 general election.

In principle, if enacted, the existing SPS mechanism could provide a means to establish clearer boundaries and roles between DECC and Ofgem. Its effectiveness at so doing is likely to be somewhat constrained by two factors, however. The first is that, by necessity (given the depth and breadth of energy policy), it is likely to be very high level. It may not therefore preclude, or materially reduce, the prospect of dispute on more detailed points of policy design. The second is that it may be infrequently updated, resulting in gaps in its coverage. But, if the CMA remains of the view that a formal dispute resolution mechanism should exist, it may wish to explore whether the SPS could provide such a vehicle.

(b) In what circumstances should Ofgem have the right to seek a formal direction from Ofgem to implement a certain policy?

We have no views on this matter.

(c) Would DECC's formal direction undermine (or appear to undermine) Ofgem's independence?

It is extremely difficult to answer this question in the abstract, as it may depend on the context and content of the direction.

It is worth noting that the EU 3rd package mandates that national energy regulators are allowed to operate independently (of government), and you would need to ensure that any direction did not fall foul of that requirement.⁷⁵

(d) Would other measures be effective in promoting the independence of regulation?

We have no views on this matter.

⁷⁴ 'Strategy and policy statement: a consultation on the draft statement,' DECC, August 2014. <http://tinyurl.com/nl74jg7>

⁷⁵ The Commission Staff Working Paper on the interpretation of the independence provisions can be found here: <http://tinyurl.com/pdk5ff4>

Remedy 18a – Recommendation to DECC to make code administration and/or implementation of code changes a licensable activity

(a) Is this recommendation likely to result in a positive change in the initiation, development and/or implementation of code changes that pursue consumers' interests?

We have found it difficult to understand the case for change you are making here. The administration and/or implementation of code changes *already is a licensable activity*. Each of the codes is established as a result of a license obligation on an individual licensee or group of licensees to put a code in place that fulfills defined functions. Other licensees are then obligated to accede and comply with relevant codes⁷⁶.

Because of these arrangements, in principle Ofgem already has 'the power to efficiently monitor performance of these bodies, give them directions and impose sanctions where appropriate' - the outcomes that you seek to deliver through this remedy.

To take the Balancing and Settlement Code ('BSC') as an example⁷⁷⁸, Ofgem already has a wide range of powers to monitor, direct or impose the code administrators actions and to maintain quality control. For example:

Ofgem has powers in terms of quality control and consistency across codes. The licensee is obligated to be consistent with the Code Administration Code of Practice, the contents of which are determined by Ofgem (transmission licence standard condition ('TLSC') C3 1(e)). Ofgem has to approve the Chair of that code panel, who can exert major influence on its proceedings and the quality control of its products (TLSC C3 1(f)). Ofgem can direct the licensee to ensure 'that the modification procedures are complied with' if they are not (TLSC C3 4 (d)). If it receives a modification report that is inadequate or unfit for purpose, Ofgem can send it back, specifying 'additional steps... revision, analysis and/or information' that needs to be provided in a replacement report (TLSC C3 5(aa)).

Ofgem can also monitor the processes of the Panel, and of the operation of the code itself. It has (and exercises) the right to attend and speak at the Panel (under BSC clause B 2.12.1). It has (and exercises) the right to attend and speak at modification workgroups (BSC F 2.4.17). The Panel is obligated to send it a monthly report detailing the progression of modifications (BSC F 1.4). It can seek further information in relation to a modification proposal using the send back powers detailed above, or 'information about the operation of the BSC and/or the balancing and settlement arrangements' at any time (TLSC C3 9).

⁷⁶ With the exception of the Uniform Network Code (UNC). Accession to the UNC is in theory voluntary, though in practice a gas shipper could not operate their business if they did not do so.

⁷⁷ 'Transmission licence - standard conditions,' Ofgem, 15 May 2015. <http://tinyurl.com/pg9xr6e>

⁷⁸ In this example, National Grid Electricity Transmission plc is referred to as the 'code owner', as the licence requirements referred to sit in its transmission licence. References to Ofgem and to the Authority are considered to be interchangeable.

Ofgem can also make a range of directions to the licensee. It can send back deficient reports, using the send back powers highlighted above. It can veto requests to extend (already time limited) assessment processes if it thinks these are unreasonable (TLSC C3 4(b)(iv) and a proposal cannot be treated as 'urgent' without its consent. It can initiate modification proposals in several circumstances, such as in order to comply with European legislation (TLSC C3 4(a)) or to implement the outcomes of significant code reviews (TLSC C3 4(b)). It directs any material changes to the code (TLSC C3 4).

While NGET has effectively outsourced the administration of the BSC to an uncontrolled subsidiary, Elexon, a failure to comply with these licence conditions would constitute a breach of its licence. The consequence of licence breach are potentially acutely severe including being subject to an enforcement order and/or subject to a fine of up to 10% of turnover.

While the example above relates to the BSC, the licence requirements of other codes are fundamentally similar. So we see this as a heavily licensed activity, where the regulator already has considerable oversight powers. Whether it uses those powers effectively is perhaps a different question.

It is possible, though unclear, that what you envisage is the hiving off of the code administrators so that they are no longer owned by a specific licensee. This could perhaps remove the risk of perceived conflicts of interest, i.e. that the code administrator could be accused of favouring proposals initiated by its owner, or make the enforcement chain less complicated where a code administrator currently has either an arm's length owner (such as NGET in relation to the BSC) or multiple owners (such as the gas transporters in relation to the UNC). We recognise theoretical benefits in principle to either, though we think that the incremental benefit versus the status quo may be very limited.

If code administration were to become a separately licensable activity you would need to establish a licence regime to facilitate this - currently, transmission (electricity only), distribution, interconnection, generation (electricity only), supply, transportation (gas only) and shipping (gas only) are defined as licensable activities in legislation. It is not obvious that a company that only does code administration would naturally fit within any of these categories. It may be that a new licensable activity would need to be established, which would presumably need to be enacted through primary legislation.

(b) Would this remedy be more effective if certain functions currently carried out by code panels and/or network owners (eg setting up working groups) were transferred to code administrators?

We see no reason to believe that this would be an improvement on the status quo. It is not clear what problem you are trying to solve, or why this would help.

(c) Would this remedy be more effective if Ofgem or DECC were to impose stricter requirements relating to the selection (eg competitive tender), financing and/or independence of code administrators (and/or delivery bodies)?

We see no reason to believe that this would be an improvement on the status quo. It is not clear what problem you are trying to solve, or why this would help.

Remedy 18b – Granting Ofgem more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes

(a) Is this recommendation likely to result in a positive change in the development and/or implementation of code changes that pursue consumers' interests?

We support this remedy in-principle but we are conscious that it will not necessarily deliver a material reduction in the time it takes to implement major change. As we outlined in our response to your issues statements, we believe there are underlying structural problems with the codes framework, in particular the number and complexity of the codes, that is the root cause of the inertia and resistance to change you have identified in your investigation. In this context, reforming the change process that sits atop the framework is akin to fitting a new gearbox to a car whose engine is also shot - it might be worthwhile but by itself does not solve the problem.

We would also note that the three SCRs that Ofgem has instigated - cash-out, gas security of supply, and electricity transmission charging - were not implemented in a timely way not just because the second 'code implementation' step in the process was protracted, but because the preceding step, which Ofgem itself led, also dragged on.⁷⁹ Our concern is that a remedy which strengthens Ofgem's power to project manage and/or control the timetables of code changes, if utilised, will merely make the preceding SCR phase of change processes (which are not covered by your remedies) even more contested and protracted. We are therefore disappointed that you have conclude at paragraph 11.106 of your Provisional findings report that the complexity of the code framework is a function of the 'complexity of the industry and the technical and commercial relationships between market players' and is not something that can be simplified - even if this takes the form of a consolidation of code administration rather than the codes themselves as has been recently suggested.⁸⁰

We continue to believe one of the best ways to reform the code framework to ensure it evolves in a way that serves consumers is to align the decision-making criteria - the code objectives - with Ofgem's principal objective duty to protect the interests of current and future consumers. Industry has tended to adopt a very narrow interpretation of the 'competition' and 'efficiency' criteria that currently guide code decisions, leading to analysis and debates taking place at an unhelpful level of abstraction from the real-world impacts of the proposals - something that in our view disenfranchises smaller or non-traditional actors from engaging in code governance.

A good example of this was a recent modification, UNC 0535, 'Implementation of Non Effective Days to enable Annual AQ Review (independent of Nexus transition)', as the name suggests, sought to insert two extra days into the standard switching time frame at a fixed point every year to allow market participants to process certain data. The proposal was

⁷⁹ Timetables for the three SCRs from initiation to decision - i.e. excluding implementation - are set out in Table 1 of 'Further review of industry code governance,' Ofgem, 15 May 2015. <http://tinyurl.com/pj5t685>

⁸⁰ Nigel Cornwall recently suggested, for example, that it may be more sensible to amalgamate code administrators rather than the codes themselves. <http://tinyurl.com/psanta4>

supported by industry on the basis that it would ensure critical data validation and processing could take place at a lower cost and with less risk of error. But there was no meaningful consideration in either the industry representations or in the modification report of consumers' opportunity costs associated with a longer switching time frame. The only clue that there might even be a downside that needed to be considered was in E.ON's representation, that noted that 'initial analysis indicates around 4k customers might be impacted by these non-effective dates'.⁸¹

This failure to consider the full range of cost and benefits is most evident in modifications that come forward to delay the implementation of major system upgrades or changes to the market rules. As far as we can tell for example, no attempt has been made to assess or even quantify the consumers' foregone benefit from a delay to Project Nexus – benefits that presumably run into the millions of pounds given the quantum of the upside identified in the original impact assessment for the package.⁸² The word 'consumer' does not even feature in the paper Xoserve presented to a Project Nexus Steering Group meeting setting out the reasons why a partial deferral was necessary,⁸³ while the (now withdrawn) delay and deferral modifications UNC 0535 and 0536 do not identify forgone consumer benefits as something the workgroups for each modification should consider as part of their assessment.

Of course there are two checks built into the framework to deal with this sort of problem: the first line of defence being the consumer panel representative; and the second being Ofgem in its role as the final decision-maker. But in our experience, the heavily technical nature of the subject matter, the absence of information about consumer impacts, and a disproportionate focus on procedure over substance at panel meetings – the substance being dealt with at a working group level – limits our ability to spot issues and pose effective challenges. And while Ofgem assesses the modification against its broader statutory duties, this happens at the end of the process by which time assumptions have become entrenched and momentum built up behind solutions. Having Ofgem intervene late in the process to test basic assumptions also seems inefficient, something the Brattle Group highlighted in its report for the CGR.⁸⁴

Introducing a consumer objective would flush out issues at an earlier stage of the process and provide a 'point of entry' into the debate, not only for consumer representatives but also smaller and/or non-traditional actors who may not be energy industry insiders who are familiar with code argot. To ensure this information is not lost in the change documentation, we also suggest that a specific 'consumer impact' section is added to the modification templates. The expectation would be that this section record high-level information about who is affected (e.g. domestic pre-pay customers, geographic location etc.), how they are affected (e.g. costs, standard of service etc.) and an indication of the overall costs and benefits (with an attempt to factor-in opportunity costs). This should not prove an onerous task for industry who should already be considering all of these factors in addressing the

⁸¹ 'Final modification report,' Joint Office of Gas Transporters, 18 June 2015. <http://tinyurl.com/pxzt2f8>

⁸² The Project Nexus package as a whole was estimated to deliver quantitative benefits of more than £11 million pounds per year – see page 4 of Ofgem's modification decision for UNC432. <http://tinyurl.com/ogkvr47>

⁸³ 'UK Link Programme Deferral of Retrospective Asset and Supply Point Updates and Unique Sites Systematisation for the Project Nexus Industry Steering Group,' Xoserve, 9 April 2015. <http://tinyurl.com/ombobv6>

⁸⁴ Page 4, 'Critique of the Industry Code Governance Arrangements,' Brattle Group, June 2008. <http://tinyurl.com/p7supht>

existing competition, efficiency criteria but often fail to do so explicitly as we have detailed in the examples above.

The introduction of a consumer code objective could facilitate engagement with the codes by a wider range of stakeholders through making the codes more accessible and relevant. Citizens Advice (and its predecessors Consumer Focus and Consumer Futures) are currently usually the only consumer representative to meaningfully engage with industry codes processes. Other consumer groups do not attend code panels, and incredibly rarely provide consultation responses or attend working groups. Such other consumer representation as there is invariably comes from intensive (i.e. heavy industry) users, there are no other domestic consumer voices. We ourselves attend code panels principally because we consider ourselves obligated to given our statutory role in the sector, and not because we can see great evidence that consumer input is valued or recognised - put simply, we participate in spite of the way the codes work, not because of it. This is not a healthy position. Based on the feedback we receive from other consumer groups and interested third parties we perceive the barriers to be driven by lack of resourcing and the unintelligibility of both the codes themselves and their change processes to a casual user. It should not have to be this hard. A consumer code objective could help to draw out a plainer English explanation of why rule changes matter, and help to facilitate engagement with the end users who will have to pay for, and see the service they receive or costs/benefits they face, change as a result of them.

(b) Would this undermine the principle (and effectiveness) of industry led code changes?

No. A regulator, even one with strong powers to direct change and a willingness to use them, will have limited resources and will necessarily concentrate on a small number of 'policy' issues e.g. how to facilitate the smart meter roll-out. There will continue to be both space and a need for industry to initiate and progress change through the usual code modification processes (standard and self-governance routes). Indeed, we would make the point that as the energy system and market becomes more decentralised and dynamic, there will be a new set of smaller and/or non-traditional actors who may wish to pursue code modifications through the standard industry change route (i.e. non-SCR).

Around the edges, there may be a risk that the potential proposers of rules changes that are perceived to be highly controversial and/or resource intensive to drive forward may seek to encourage Ofgem to take ownership of those issues and bring forward the changes under an SCR rather than doing so themselves.⁸⁵ This is not a new risk, but Ofgem will need to be mindful of how it navigates it. For example, while it has criticised the industry for the slow pace of changes to introduce half hourly settlement (as you highlight, in relation to Remedy 13), the industry could reciprocate the challenge: if you think it is so important, why not raise

⁸⁵ In some regards there are also parallels in the CMA's inquiry itself. A number of the issues raised such as mandatory half hourly settlement, the introduction of locational transmission losses and revisions to the AQ process are ones where industry (or Ofgem, through the SCR process) could raise modifications to change market rules. The existence of the inquiry may provide an opportunity for these matters to be dumped in your lap, even though a pre-existing industry [Ofgem] led route to solve them was available to those parties.

an SCR? Blurring of process ownership could result in inaction - because there is perceived to be no clear owner of an issue - in some circumstances.

More broadly, it would be advisable for the regulator to avoid getting dragged too deeply into the micro-management of 'normal' modifications. Scheduling working group meetings and developing implementation rules and timetables are matters better managed by the code administrators and we would expect to see Ofgem involved in those areas only by exception - so if given powers to project managing timetables, we would expect it to use these to keep the overall timetable on track rather than dictating all the sub-steps within it.

(c) Should this power be limited to the completion of certain elements of the development or implementation phase (eg consultation, setting up working groups)?

No. The power to impose a timetable will only make a material difference to the pace of change if it covers the overall timetable for the code modification process.

(d) Should Ofgem's ability to use this power be limited to defined circumstances (eg modification proposals which are relevant to Ofgem's principal objectives) or should it be left to Ofgem's discretion?

No, this should be left to Ofgem's discretion. Practically, the regulator will need to focus on a narrow subset of key issues, leaving, as we explain in response to your previous question, space for industry to initiate and progress change. Additionally, it may also be difficult to define the circumstances where it may be appropriate for Ofgem to intervene, given changing priorities and an evolving industry. It is also difficult to see how confining the exercise of the power to those issues which relate back to Ofgem's principal objectives, being broadly cast, would in any way restrict the circumstances in which it could act.

Remedy 18c – Appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute

(a) Are there benefits in terms of independence, impartiality and/or industry know-how of an independent code adjudicator that are not available with Ofgem, given its other responsibilities, when undertaking the adjudicator role?

You suggest that:

‘By appointing and giving appropriate powers to an independent code adjudicator, this remedy would aim to resolve disagreements between parties over code changes more quickly than is currently the case. We currently envisage that an independent code adjudicator would need to be granted Ofgem’s current role to approve or refuse code modification proposals. In addition, a code adjudicator would need to be granted more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes (as envisaged for Ofgem under Remedy 18b).’

We note that there already is a statutory adjudicator to resolve disagreements between parties over code changes after the point where a decision to approve or reject that proposal has been made by Ofgem - the CMA, under the terms of Section 173 of the Energy Act 2004. This adjudication route has been used very sparingly since its introduction, with only one appeal making it all the way through the process to conclusion, and one other being sought but then abandoned by a prospective appellant before it had reached the point of formal acceptance by (as the CMA was then) the Competition Commission. The low utilisation rate of this adjudication process may reflect stakeholder perceptions of prohibitive cost and resourcing barriers to appeal. E.on, who was one of the appellants in the sole modification appeal to have been heard, has said that it spent £257,000 on external legal costs in that appeal⁸⁶ and we have no reason to believe that this is out of kilter with the likely costs that other appellants could face. In addition to external legal costs, an appellant may face material internal costs (in terms of staff resourcing and diversion of management focus from other activities), the possible prospect of having other parties costs awarded against them, plus reputational disincentives to appeal (i.e. regulated firms are unlikely to take the step of legal action against their regulator lightly, given their ongoing relationship with the regulator). In combination, these are likely to provide a significant deterrent to seeking adjudication. It may be worth considering whether this appeals process could be made less burdensome - its low utilisation rate suggests it is not regarded as a viable route of challenge.

In terms of disputes pre-decision, we are not sure what you envisage here. Clearly both the relevant code Panel and Ofgem have some existing duties and powers in relation to how they administer modification processes. In practice, because the Panels are usually constituted from representatives of market players, it is more likely that Ofgem will be in a position to act as an adjudicator on a disputed matter. This line may become more blurred if the dispute relates to a modification prompted by an SCR - in such cases, it may be felt that

⁸⁶ ‘Proposals for implementation of licence modification appeals under the EU Third Package,’ DECC, June 2011. <http://tinyurl.com/pd5x6np>

Ofgem cannot fairly adjudicate as it may have already stated an opinion in relation to the matter.

(b) Would there be unintended consequences, arising for instance from an increased lack of coordination between code modification governance, licence modifications and legislation?

As highlighted in our previous answer, we are unclear on what you are proposing and why - both the perceived problem and the proposed remedy to it are ambiguous. Given this ambiguity we do not feel confident that we understand the proposal sufficiently well to comment on this question. We may wish to comment in more detail later if/when a more detailed model becomes available.